

<p>(8) In order to ensure coherence and give certainty to businesses and Member States' authorities, the notion of "incitement to 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 which defines hate speech as "publicly inciting to violence or hatred". This should include aligning the grounds on which incitement to violence or hatred is based.</p>	<p>(8) In order to ensure coherence and legal certainty, the offence of "incitement to hatred" shall "a constant definition under international law that provides adequate foreseeability, covers all possible grounds of discrimination, and prohibits only content that incites to discrimination, hostility or violence.</p>
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Justification:

There is no logical reason to redefine an offence that is already regulated at EU level, much less redefine it as not necessarily being an offence. Legal certainty is needed not only by businesses and Member States, for to civil society organisations and citizens. Therefore, we urge to use use common legal terms like "legal certainty".

<p>(26) There are new challenges, in particular in connection with video-sharing platforms, on which users - particularly minors - increasingly consume audiovisual content. In this context, harmful content and hate speech stored on video-sharing platforms have increasingly given rise to concern. It is necessary, in order to protect minors from harmful content and all citizens from content containing incitement to violence or hatred, to set out proportionate rules on those matters.</p>	<p>(26) There are new challenges, in particular in connection with video-sharing platforms, on which users - particularly minors - increasingly consume audiovisual content. In this context, it is necessary to set out proportionate rules on those matters.</p>
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Justification:

Insofar as action is needed in this area, a horizontal approach is needed. All providers already have obligations regarding transmission (linear) or hosting (non-linear) of illegal content. No evidence has been provided to indicate that an horizontal approach is inadequate.

<p>(28) 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</p>	<p>(28) An important share of the content hosted by video-sharing platforms is not under the editorial responsibility of the video-sharing platform provider. . Those providers should be required, if the size or nature of their audience merits this, to take appropriate measures to protect minors from content that may impair their physical, mental or moral development.</p>
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take appropriate measures to protect minors from content that may impair their physical, mental or moral development **and protect all citizens from 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.**

Justification

It makes little sense to regulate video-based social media in one way – based on the “automatic” or “other” organisation of hosted content and other social media in a different way.

Services should be regulated, if their on their size and audience merits this. For instance, it's not proportionate to regulate providers that are either too small or whose services are irrelevant for minors.

The final text section of the text is deleted as illegal content is already regulated under EU law and the value added of the unclear new level of regulation in this proposal is not explained and is not clear.

(29) In light of the nature of the providers' involvement with the content stored on video-sharing platforms, those appropriate measures should relate to the organisation of the content and not to the content as such. The requirements **in this regard** as set out in this Directive should **therefore** apply without prejudice to Article 14 of Directive 2000/31/EC of the European Parliament and of the Council [34](#) , which provides for an exemption from liability for illegal information **stored** by certain providers of information society services. **When providing services covered by Article 14 of Directive 2000/31/EC, those requirements should also apply without prejudice to Article 15 of that Directive, which precludes general obligations to monitor such information and to actively seek facts or circumstances indicating illegal activity from being imposed on those providers, without however concerning monitoring obligations in specific cases and, in particular, without affecting orders by national authorities in accordance with national legislation.**

(29) The requirements set out in this Directive should apply without prejudice to Articles 14 **and** 15 of Directive 2000/31/EC of the European Parliament and of the Council [34](#) , which provides for an exemption from liability for illegal information **hosted** by certain providers of information society services.

Justification

The Commission's proposal increases, without justification, legal uncertainty. The E-commerce

Directive already regulates the issues outlined. The changes proposed achieve the same intention of the Commission without bringing legal uncertainty.

<p>(30) It is appropriate to involve the video-sharing platform providers as much as possible when implementing the appropriate measures to be taken pursuant to this Directive. Co-regulation should therefore be encouraged.</p> <p>With a view to ensuring a clear and consistent approach in this regard across the Union, Member States should not be entitled to require video-sharing platform providers to take stricter measures to protect minors from harmful content and all citizens from content containing incitement to violence or hatred than the ones provided for in this Directive. However, it should remain possible for Member States to take such stricter measures where that content is illegal, provided that they comply with Articles 14 and 15 of Directive 2000/31/EC, and to take measures with respect to content on websites containing or disseminating child pornography, as required by and allowed under Article 25 of Directive 2011/93/EU of the European Parliament and the Council 35 . It should also remain possible for video-sharing platform providers to take stricter measures on a voluntary basis.</p>	<p>(30) It is appropriate to involve the video-sharing platform providers, civil society organisations and other stakeholders as much as possible when implementing the appropriate measures to be taken pursuant to this Directive. Co-regulation within a transparent and accountable multistakeholder process should therefore be encouraged.</p> <p>With a view to ensuring a clear and consistent approach in this regard across the Union, Member States should not be entitled to require video-sharing platform providers to take stricter measures than the ones provided for in this Directive where content is illegal.</p>
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Justification

Video-sharing websites are already regulated by the E-Commerce Directive. Any additional requirement will, almost by definition, lead to the deletion of legal content, due to fears of liability in this new, confused environment. The last part of this recital places video-sharing platforms on a higher level than legislators. The law and the safeguards therein must be respected by all parties.

<p>(31) When taking the appropriate measures to protect minors from harmful content and to protect all citizens from content containing incitement to violence or hatred in accordance with this Directive, the applicable fundamental rights, as laid down in the Charter on Fundamental Rights of the European Union, should be carefully balanced. That concerns in particular, as the case may be, the right to respect for private and family life and the protection of personal data, the</p>	<p>(31) When taking restrictive measures to protect minors from illegal content, the applicable fundamental rights, as laid down in the Charter on Fundamental Rights of the European Union, should be carefully balanced. That concerns in particular, as the case may be, the right to respect for private and family life and the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the prohibition of discrimination and the right of</p>
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<p>freedom of expression and information, the freedom to conduct a business, the prohibition of discrimination and the right of the child.</p>	<p>the child. Member States have a positive obligation to ensure that the balance of incentives for media service providers and video-sharing platform providers covered by this Directive is such that that legal content, including content that can offend, shock or disturb, can be communicated. Similarly, age verification should only be required by law if necessary and proportionate and be implemented in a way which offers maximum protection for privacy.</p>
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Justification

Many of the proposals in the Directive raise significant questions with regard to freedom of expression and privacy. Our suggested changes reflect the Council of Europe and the United Nations' approach that States need to protect fundamental rights and freedoms when seeking to privatise law enforcement in the online environment. The logic of the proposal, to simply extend regulation from traditional linear and non-linear media to “video-sharing” services vastly underestimates the risks of unintended consequences.

<p>(32) The video-sharing platform providers covered by this Directive provide information society services within the meaning of point (a) of Article 2 of Directive 2000/31/EC. Those providers are consequently subject to the rules on the internal market set out in Article 3 of that Directive, if they are established in a Member State. It is appropriate to ensure that the same rules apply to video-sharing platform providers which are not established in a Member State with a view to safeguarding the effectiveness of the measures to protect minors and citizens set out in this Directive and ensuring a level playing field in as much as possible, in as far as those providers have either a parent company or a subsidiary which is established in a Member State or where those providers are part of a group and another entity of that group is established in a Member State. To that effect, arrangements should be made to determine in which Member State those providers should be deemed to have been established. The Commission should be informed of the providers under each Member State's jurisdiction in application of the rules on establishment set out in this Directive and in Directive 2000/31/EC.</p>	<p>(32) Video-sharing platform providers covered by this Directive provide information society services within the meaning of point (a) of Article 2 of Directive 2000/31/EC and generally provide hosting services in line with Article 14 of that instrument. Those providers are consequently subject to the rules on the internal market set out in Article 3 of that Directive, if they are established in a Member State. It is appropriate to ensure that the same rules apply to video-sharing platform providers which are not established in a Member State with a view to safeguarding the effectiveness of the measures to protect citizens set out in this Directive and ensuring a level playing field in as much as possible, in as far as those providers have either a parent company or a subsidiary which is established in a Member State or where those providers are part of a group and another entity of that group is established in a Member State. To that effect, arrangements should be made to determine in which Member State those providers should be deemed to have been established. The Commission should be informed of the providers under each Member State's jurisdiction in application of the rules on establishment set out in this Directive and in Directive 2000/31/EC.</p>
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Justification

The E-Commerce Directive's liability exceptions have been key to ensuring the growth of information society services. Any failure to maintain this protection will have a damaging effect on the online environment in Europe, particularly for smaller companies. The reference to "minors" seems superfluous, since minors are included in the category of "citizens".

<p>(39) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to freedom of expression, the freedom to conduct a business, the right to judicial review and to promote the application of the rights of the child enshrined in the Charter of Fundamental Rights of the European Union.</p>	<p>(39) Member States are under a positive obligation to ensure that measures taken to transpose this Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, Member States shall ensure that no measure adopted in transpose this Directive directly or indirectly undermines the right to freedom of expression, the freedom to conduct a business, the right to judicial review and to promote the application of the rights of the child enshrined in the Charter of Fundamental Rights of the European Union.</p>
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Justification

Some proposals in the AVMSD review include demands for increased restrictions on content uploaded by individuals to social media that fall under the definition of "video-sharing websites". Such restrictions must be as limited and predictable as possible and respect the provisions of Article 52 of the Charter, which requires that restrictions must be provided for by law, be necessary and proportionate to the aim pursued.

<p>New Article</p>	<p>New Recital Self- and co-regulatory measures implemented or approved by Member States or the European Commission must fully respect the obligations of the Charter of Fundamental Rights, in particular Article 52 thereof.</p>
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Justification

In line with our comments above, there is a need for "voluntary mechanisms" to respect the law and the safeguards therein.

We believe that video-sharing platforms should not be subject to vertical legislation. However, if it is not possible to delete these provisions completely, we propose the following amendments to minimise the negative effects of this approach

<p>Article 1,1 (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>Article 1,1 (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 thereof, including as a dissociable section of a wider service, 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>
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Justification

It needs to be clear that it is the stand-alone AVMS service that is regulated by the Directive and not the entity of which the service is part.

<p>"(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:</p> <p>(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;</p> <p>(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;</p> <p>(iii) the principal purpose of the service or a dissociable section thereof is devoted to providing programmes and user-generated videos to the</p>	<p>"(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 cumulative requirements:</p> <p>(i) the service consists of the storage of whose level of use in a national market is such that specific regulatory intervention is proportionate and which hosts programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;</p> <p>(ii) the active organisation of the stored content allows it to have knowledge or control of the data stored;</p> <p>(iii) the principal purpose of the service or a service which is a dissociable section of another service is devoted to providing programmes and</p>
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<p>general public, in order to inform, entertain or educate;</p> <p>(iv) the service is made available by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC.";</p>	<p>user-generated videos to the general public, in order to inform, entertain or educate; and</p> <p>(iv) the service is made available by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC.";</p>
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Justification

The amendment to subsection (ii) brings the text into line with the knowledge requirement of the CJEU case L'Oreal/E-Bay, c-324/09. The amendment to subsection (iii) brings the text into line with the CJEU case NewsMedia Online GmbH v. Bundeskommunikationssenat, c-347/14. Finally, it needs to be made clear that the criteria are cumulative. Otherwise, it would be very difficult to estimate which platforms will be within the scope of the reviewed AVMSD, leading to legal uncertainty.

<p>Article 28a. 1 (b)</p> <p>(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.</p>	<p>Article 28a.1 (b)</p> <p>(b) act expeditiously to remove or disable access to illegal content, once it receives actual knowledge of the illegality of the content.</p>
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Justification:

A Framework Decision already exists on incitement to hatred. It is inconsistent, both here and in Recital 8, for the Commission to seek to move away from the law – in obvious contradiction to Article 52 of the Charter – with regard to regulation of content in this context. "It" refers to video-sharing platform providers.

<p>Article 28a.</p> <p>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.</p> <p>Those measures shall consist of, as appropriate:</p> <p>(a) defining and applying in the terms and conditions of the video-sharing platform</p>	<p>Article 28.a</p> <p>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. Restrictive measures implemented by providers of video-sharing platforms that are not specifically required by national law shall only be</p>
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<p>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;</p> <p>(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;</p> <p>(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;</p> <p>(d) establishing and operating systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;</p> <p>(e) providing for parental control systems with respect to content which may impair the physical, mental or moral development of minors;</p> <p>(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).</p>	<p>permitted if national procedural rules provide a possibility for internet users to assert their rights before the court once the implementing measures taken by the internet service provider are known</p> <p>Those measures may consist of, as appropriate:</p> <p>(a) 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, in full respect of the data protection legislation and principles, in particular, purpose limitation, data minimisation and data protection by design and by default;</p>
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Justification

Modifications in the beginning of para. 2 of Article 28a bring the proposed reform into line with CJEU case law, specifically with the CJEU case *Kino.to*, c-314/12 (paragraph 57)

Point a: It is entirely inappropriate for the Commission to seek to give the 28 Member States the right to regulate the private contracts between video sharing websites and their customers. It is not for a state to decide what a company should allow or forbid its customers from doing. This proposal is particularly disturbing in the context of other instruments – such as the Europol regulation – which tasks that body with the job of pointing out not illegal content – but legal material to internet companies for their “their voluntary consideration of the compatibility of the referred internet content with their own terms and conditions” (cf. Article 4,1 (m) of the Europol Regulation). Under the AVMSD, the providers’ “own terms and conditions” would be dictated by Member States.

Point b: There is indication that the absence of such mechanisms is, or is likely to become, a problem. Consequently, the inclusion of this provision is contrary to Better Regulation principles.

Point c: If Member States identify a problem that is of a scale that specific legislation is needed on age verification, this will raise significant privacy concerns. It is therefore important to ensure that these are designed with data protection in mind.

Point d: There is indication that the absence of such mechanisms is, or is likely to become, a problem. Consequently, the inclusion of this provision is contrary to Better Regulation principles.

Point e: Parental controls software can be installed on a network level or on a software level. It seems inefficient and unnecessary to legislate for parental controls software on a service by service basis.

Point f: This seeks to regulate the quality of communications between a provider and its customers. There is indication that the absence of such mechanisms is, or is likely to become, a problem. Consequently, the inclusion of this provision is contrary to Better Regulation principles.

<p>Article 28a 4. Member States shall establish the necessary mechanisms to assess the appropriateness of the measures referred to in paragraphs 2 and 3 taken by video-sharing platform providers. Member States shall entrust this task to the authorities designated in accordance with Article 30.</p>	<p>Article 28a 4. Member States shall establish the necessary mechanisms to assess the transparency, necessity, effectiveness and proportionality of the measures referred to in paragraphs 2 and 3 taken by video-sharing platform providers. Member States shall entrust this task to an appropriate national authority, which may be the authorities designated in accordance with Article 30.</p>
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Justification:

It is not clear what the Commission understands by “appropriateness” nor what the Member States might understand by this wording. The proposed amendment seeks to add clarity and refer to legal principles.

<p>Article 28a 5. Member States shall not impose on video-sharing platform providers measures that are stricter than the measures referred to in paragraph 1 and 2. Member States shall not be precluded from imposing stricter measures with respect to illegal content. When adopting such measures, they shall respect the conditions set by applicable Union law, such as, where appropriate, those set in Articles 14 and 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU.</p>	<p>Article 28a 5. When adopting measures in relation to content that has been ruled to be illegal, Member States shall respect the conditions set 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.</p>
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Justification:

There is no obvious reason to regulate illegal content in one way in this subset of social media. If additional clarification or regulation is, on the basis of a credible impact assessment, then this should be

done in a horizontal way.

Article 28a 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 the appropriate measures referred to in paragraphs 1 and 2.	Article 28a 6. Member States shall ensure that effective complaint and redress mechanisms are available for the settlement of disputes, including, where practical, counter-notice procedures , between users and video-sharing platform providers relating to the application of the appropriate measures referred to in paragraphs 1 and 2.
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Justification:

At the moment, notice procedures are weighed heavily towards deletion of legal content. In order to bring practices more into line with the EU Charter and European Convention on Human Rights.

Article 28a 7. The Commission and ERGA shall encourage video-sharing platform 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.	Article 28a 7. The Commission and ERGA shall encourage video-sharing platform providers to exchange best practices on co-regulatory systems across the Union.
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Justification:

The proposal that the Commission should be required to develop co-regulatory codes “if appropriate” is very unclear. As appropriateness is highly subjective, this suggestion is too unclear to include in legislation. In addition, [experience shows](#) that these processes are not representative, inclusive or open to the relevant stakeholders, which lead to unsatisfactory results.

Article 28a 8. Video-sharing platform providers or, where applicable, the organisations representing those providers in this respect shall submit to the Commission draft Union codes of conduct and amendments to existing Union codes of conduct.	Article 28a Deleted
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Justification:

The Commission has not presented any evidence to suggest that this particular regulation of self-regulation in the subset of social media represented by video sharing platforms is necessary or appropriate.