

**A BILL  
Entitled**

*AN ACT to amend the Broadcasting Act, Cap. 350*

BE IT ENACTED by the President, by and with the advice of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

**Short Title.**

1. The short title of this Act is the Broadcasting (Amendment) Act, 2020.

**Part 1 – Amendments to the Broadcasting Act**

**Amendment of Article 2 of the Broadcasting Act**

2. For the definition “Minister” there shall be substituted the following:

“Minister” unless otherwise shown, means the Minister responsible for broadcasting.

**Amendment of Article 16 of the Broadcasting Act**

3. For the definition “Council Directive” there shall be substituted the following:

“Council Directive” means the Council Directive 89/552/KEE of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as published in the Official Journal No. L. 202/60 on 30 June 1997 as amended by Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 or as may be amended or substituted from time to time;

4. Immediately after the definition “Directive” there shall be added the following new definition of “Media Literacy”:

“Media Literacy” refers to skills, knowledge and understanding that allow citizens to use media effectively and safely.

**Amendment of Article 16G of the Broadcasting Act**

5. For the definition “audiovisual media service” there shall be substituted the following:

“audiovisual media service” means:

- 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, to the general public, in order to inform, entertain or educate, by means of 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.
  - ii. Audiovisual commercial communication;
6. The definition “on-demand audiovisual media service” shall be substituted by the following:

“on-demand audiovisual media service” means a non-linear 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;
7. Immediately after the definition “on-demand audiovisual media service” there shall be added the following new definition:

“video-sharing platform service” means 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 of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.’;
8. For the definition “programme” there shall be substituted the following:

“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;
9. The definition “media service provider” shall be substituted by the following:

“media service provider” means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of an audiovisual media service and determines the manner in which it is organised;

10. Immediately after the definition “Directive” there shall be added the following new definition:

“editorial decision” means a decision which is taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of the audiovisual media service”;

11. Immediately after the definition of “editorial decision” as added by this Act, there shall be added the following new definition:

“video-sharing platform provider” means the natural or legal person who provides a video-sharing platform service;”;

12. Immediately after the definition “European Union” there shall be added the following new definition:

“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;

13. For the definition “audiovisual commercial communication” there shall be substituted the following:

“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 person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video 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;”;

14. Immediately after the definition “surreptitious audiovisual commercial communication” there shall be added the following new definition:

“pop-up advertising” means all forms of audiovisual commercial communication that appears superimposed on the audiovisual media service during the television broadcast of the same service.

15. For the definition “sponsorship” there shall be substituted the following:

“sponsorship” means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products;

16. For the definition “product placement” there shall be substituted the following:

“product placement” means any form of audiovisual commercial communication consisting in the inclusion of, or reference to, a product, a service or the trade mark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration;

17. Immediately after the definition “surreptitious audiovisual commercial communication” there shall be added the following new definition:

“thematic placement” means commercial product placement through the integration of the product into the theme, colloquium, dialogue or any other form of integration into a television programme or part thereof such as the integration of a commercial product as a theme in a drama series.

18. For the definition “broadcasting” there shall be substituted the following:

“television broadcasting” or “television broadcast” means a linear audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.

### **Amendment of Article 16H of the Broadcasting Act**

19. Sub-article 1(3)(b) of Article 16H of the principle Act shall be substituted by the following:

if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, the media service provider shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates. If a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office. If a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the

Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

20. Immediately thereafter sub-article (6) of Article 16H of the principle Act there shall be added the following new sub-articles:

(7) Media service providers inform the competent national regulatory Authority about any changes that may affect the determination of jurisdiction in accordance with sub-articles 2, 3 and 4 of this Article.

(8) The competent national regulatory Authority shall establish and maintain an up-to-date list of the media service providers under their jurisdiction and indicate on which of the criteria set out in sub-articles 2 to 5 their jurisdiction is based. The competent national regulatory Authority shall communicate that list, including any updates thereto, to the Minister.

#### **Substitution of Article 16J of the Broadcasting Act**

21. Article 16J of the principle act shall be substituted by the following:

**16J.** (1) A media service provider shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

(a) its name;

(b) the geographical address at which it is established;

(c) the details, including its email address or website, which allow it to be contacted rapidly in a direct and effective manner;

(d) the Member State having jurisdiction over it and the competent regulatory authorities or bodies or supervisory bodies.

(2) The media service provider shall make accessible information concerning their ownership structure, including the beneficial owners.

(3) Each directive and / or measure that the Authority grants or takes for the purpose of the preceding sub-article shall be necessary and proportionate and shall aim to respect the rights and observe the principles reflected in the Charter of Fundamental Rights of the European Union.

#### **Addition of New Article after Article 16J**

22. Immediately after Article 16J of the principle act there shall be added the following new Articles 16JA, 16JB u 16JC:

**16JA** (1) Audiovisual media services provided by media service providers 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.

(2) The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.

(3) Personal data of minors collected or otherwise generated by media service providers pursuant to sub-article 1 shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

(4) Media service providers shall provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, media service providers should follow the dispositions of Standards and Practice Applicable to the Family Viewing and Listening, L.S. 350.18 in particular as regards the operation of a system describing the potentially harmful nature of the content of an audiovisual media service.

**16JB.** (1) Media services provided by media service providers shall, without undue delay, by means of a progressive and continuous process, ensure that content is accessible to persons with disabilities by means of proportionate measures. Media services should, by no later than six months after the entry into force of this article, submit an action plan detailing the measures adopted.

(2) Media service providers shall, each year, present a properly documented report to the Authority giving an account of the progress made in implementing the necessary measures to give effect to the provisions of the preceding sub-article.

(3) The Authority shall designate a single, easily accessible and publicly available online point of contact, even for persons with a disability, for providing information and receiving complaints regarding any accessibility issues referred to in this Article. These complaints are heard in accordance with the procedure referred to in Article 22A of this Act.

(4) Media service providers shall ensure that emergency information, including public communications and announcements in natural disaster situations, which is made available to the public through audiovisual media services, is provided in a manner which is accessible to persons with disabilities.

**16JC.** (1) Programmes and / or audiovisual media services should not be transmitted in a shortened form, altered or interrupted, or overlaid for

commercial purposes, without the explicit consent of the media service provider.

Provided that this Article would not effect control elements of any user interface necessary for the operation of the device or programme navigation, such as volume bars, search functions, navigation menus or lists of channels.

(2) Sub-article (1) of this article does not apply to legitimate overlays, such as warning information, general public interest information, subtitles or commercial communications overlays provided by the media service provider.

(3) Without prejudice to Article 3(3) of Regulation (EU) 2015/2120 of the European Parliament and of the Council (1), data compression techniques which reduce the size of a data file and other techniques to adapt a service to the distribution means, such as resolution and coding, without any modification of the content, should not be covered either.

### **Substitution of Article 16K of the Broadcasting Act**

23. Article 16K of the principle act shall be substituted by the following:

**16K.** (1) 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;

(2) All forms of audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers shall be prohibited;

(3) All forms of audiovisual commercial communications for casinos, whether those operating from a place accessible to the public as well as those operating through a website shall be prohibited;

(4) Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;

(5) audiovisual commercial communications 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;

(6) audiovisual commercial communications shall not cause physical, mental 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.

(7) Broadcasting of all forms of audiovisual commercial communications on food and beverage brands and products containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, the type of products known as 'High in Fat Sugar and Salt (HFSS)', is prohibited immediately before or during or immediately after children's programmes. For the purpose of classifying these products, audiovisual media service providers should follow regulations on the marketing of products that may have adverse effects on healthy lifestyles in accordance with Article 6 of the Healthy Lifestyle Promotion and Care of Non-Communicable Diseases Act as set out in Article 4 of the same Act.

(8) The broadcasting of all forms of audiovisual commercial communications regarding products which are not suitable for children or which children in general cannot reasonably be expected to buy or attempt to buy, is prohibited immediately before, during and immediately after children's programmes.

(9) Audiovisual commercial communications for alcoholic beverages in audiovisual media services shall comply with the following:

(a) it shall not be aimed specifically at minors or, in particular, depict minors acquiring or consuming such beverage;

- (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, or sedative, or a means of resolving personal conflicts;
- (e) it shall not encourage immoderate consumption of alcohol or present abstinence therefrom or moderation therein in a negative light;
- (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverage.

#### **Amendment of Article 16L(2) of the Broadcasting Act**

24. Sub-article (2) of Article 16L of the principle act shall be amended as follows:

(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.

#### **Substitution of Article 16L(4) of the Broadcasting Act**

25. Sub-article (4) of Article 16L of the principle act shall be substituted by the following:

(4) News, current affairs programmes and programmes or religious services shall not be sponsored. Pop-up advertising during news, current affairs programmes or programmes and programmes or religious services is prohibited.

#### **Substitution of Article 16M of the Broadcasting Act**

26. Article 16M of the principle act shall be substituted by the following:

**16M.** (1) This Article 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, in consumer affairs programmes, in religious programmes and services, in children's

programmes, in magazine programmes and in magazine thematic programmes.

(3) Programmes that contain product placement shall meet the following requirements:

- (a) their content and organisation within a schedule, in the case of television broadcasting, or within a catalogue in the case of on-demand audiovisual media services, shall under 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;
- (c) they shall not include thematic placement of commercial products;
- (d) they shall not give undue prominence to the product in question;
- (e) viewers shall be clearly informed of the existence of product placement by an appropriate identification at the start and at 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.

(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, 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.
- (c) Tattoo drawing as defined in the Control of Tattooing Act, Cap 270, which is broadcast between 6.00am and 9.00pm;
- (d) (i) Alcoholic drinks of more than 1.2% alcohol which is broadcast between 6.00 a.m. and 9.00 p.m.  
  
(ii) Gambling products which is broadcast between 6.00 a.m. and 7.00 p.m., infant formula; and weapons and munitions:

Provided that notwithstanding the above, gambling products which are strictly related to a sporting event may be advertised on such programme throughout the duration of such event, subject to such restrictions and conditions as the Authority and, or the Malta Gaming Authority may impose thereon:

Provided further that notwithstanding the first proviso hereof, if the Authority deems that, in the interest of public health and, or for the protection of minors and, or vulnerable persons as defined in the Gaming Definitions Regulations the advertising envisaged in the first proviso hereof shall not occur, it may restrict and, or prohibit such advertising as it deems fit in its sole discretion.

### **Addition of New Article immediately after Article 16M**

27. Immediately after Article 16M there shall be added the following new article:

**16MA** (1) The Minister in consultation with the Authority, shall appoint a Board to be referred to as a “Media Literacy Development Board” consisting of not less than ten members including a number of media experts and chaired by a Chairperson so appointed by the Minister so that, after consultation and assistance from the Authority and other governmental entities, draw up a plan, promote and take all the necessary measures for the development of media literacy skills. The members of the board shall hold office for a period of three years and each member may be substituted at the discretion of the Minister.

(2) The Board referred to in this article shall, amongst others, ensure that measures are prepared and implemented to enable citizens to have advanced media literacy skills and to have access to information in order to use, assess and create media content responsibly and securely.

(3) The Board referred to in this article shall ascertain that measures taken are not limited to learning about tools and technologies, but should aim to equip citizens with fostering critical reflection necessary for the exercise of their own faculty of judgment, analyze complex realities and distinguish the difference between opinion and facts.

(4) This Board shall submit an annual report to the Minister on the implementation of the provisions of this article and shall assist the Minister so that by the 19th December 2022 and every three years thereafter, a report on this implementation is drawn up and submitted to the Commission.

(5) The Minister shall ensure that this Board has at its disposal all the resources necessary for the effective implementation of the provisions of this article and shall also determine the remuneration of its members.

## **The heading Part IIIC – Provisions Applicable to On-Demand Audiovisual Media Services**

### **Substitution of Articles 16N and 16O of the Broadcasting Act**

28. Articles 16N and 16O of the principle act shall be substituted by the following:

**16N** (1) Providers of on-demand audiovisual media services that fall under the Maltese jurisdiction should ensure that their catalogues contain at least a minimum share of 30% of European works and that they are given sufficient prominence.

(2) The obligations relating to the promotion of European works do not apply for media service providers with a low turnover or low audience.

(3) The Authority may waive such obligations or requirements referred to in this Article where it would be impracticable or unjustified by reason of the nature or theme of the audiovisual media services.

**16O** (1) A provider for media services who intends to provide an on-demand audiovisual media service shall, before doing so, notify the Authority's Chairman by means of a written request in the form of a letter.

(2) That notification shall contain the following information:

(a) In the case of a natural person, the name, surname and address; identity card number, passport number or any other identification document as may be accepted by the Authority.

(b) In the case of a legal person, the name and address of the company and of the registered office.

(3) That person, whether natural or legal, shall provide the Authority with:

(a) name and surname of the registered editor as contained in the Media and Defamation Act;

(b) his mobile number;

(c) his landline number;

(d) his email address.

(4) When the Authority is notified in accordance with sub-article (1), the person concerned shall be deemed to be authorised to provide an on-

demand audiovisual media service, subject to such conditions as may be imposed in accordance with this Part of this Act.

- (5) The Authority may, by order in the Gazette, amend the conditions mentioned in sub-article (4). Any such amendment may only be made in objectively justified cases and in a proportionate manner. The Authority, before making any such amendment to the said conditions, shall give notice of its intention in such manner as it considers appropriate, inviting interested parties to make representations on the proposed amendments within such period of not less than thirty days as may be specified in the notice. The Authority may, in circumstances which it considers to be exceptional, shorten such period.
- (6) An audiovisual media service provider that provides an on-demand audiovisual media service should ensure that adequate measures are in place to prevent minors from accessing content that could seriously impair their physical, mental or moral development.
- (7) Audiovisual media services provided by audiovisual media service providers shall not include any:
  - (a) incitement to violence or hatred directed against a group or a member of a group on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union;
  - (b) public provocation to commit a terrorist offence as determined in accordance with Article 5 of Directive (EU) 2017/541.
- (8) Each directive and / or measure that grants or takes for the purpose of the preceding sub-article shall be necessary and proportionate and shall aim to respect the rights and observe the principles reflected in the Charter of Fundamental Rights of the European Union.

#### **Addition of New Article immediately after Article 22 of the principle Act**

29. Immediately after Article 22 of the principle act there shall be added the following new Article:

**22A** (1) Third parties wishing to complain to the Authority about any accessibility issue as provided for in Article 16B of this Act, shall submit their complaint in writing to the Chief Executive of the Authority or by registering their complaint electronically offered via the Authority's website.

(2) the Chief Executive shall investigate the complaint by ensuring that the audiovisual media service provider followed the action plan laid down in Article 16JB(1) of this Act.

(3) the Chief Executive shall forward the complaint to the audiovisual media service provider and fix a short and peremptory time-limit for the audiovisual media service provider to submit a written reply to the complaint. The reply shall be accompanied by any documents that the audiovisual media service provider deems relevant to the case.

(4) Upon expiry of the time-limit, the Chief Executive shall determine whether the complaint is *prima facie* justified.

(5) In the event that the Chief Executive is of the opinion that the complaint is *prima facie* justified, he shall inform the audiovisual media service provider in writing of the deficiencies found and shall in the same communication establish a reasonable time for the audiovisual media service provider to comply with the action plan submitted by him in accordance with Article 16JB of this Act. A copy of this communication shall be sent to the complaining third party.

(6) In the event that the audiovisual media service provider fails to comply with the action plan within the set time limit, the Chief Executive shall report on this failure to the Chairperson and the members of the Authority. After taking into account all of the circumstances, the Authority may decide to issue a directive to the audiovisual media service provider to comply with the action plan in terms of Article 15 of this act.

### **Addition of New Article after Article 16J**

30. Immediately after Article 16P of the principle act there shall be added the following new Article 16Q:

**16Q.** The 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 are encouraged to embrace the use of co-regulation and the fostering of self-regulation through codes of conduct adopted on a national level in the fields coordinated by the Directive up to its limit. These codes shall:

- (a) be such that they are broadly accepted by the main stakeholders;
- (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.

**Immediately after Article 16Q of the Principle Act there shall be added the following new heading “Part III C – Provisions Applicable for Video Sharing Platform Services” in the principle act.**

**Addition of New Article immediately after the new heading “Part III C – Applicable Provisions” in the principle act**

31. Immediately after the new heading “Part III C – Provisions Applicable for Video Sharing Platform Services” in the principle act there shall be added Articles 16AA, 16AB

**16AA.** (1) A video-sharing platform provider established in the territory of Malta within the meaning of Article 8A and the other provisions of the Electronic Communications Act and Article 3(1) of Directive 2000/31/EC shall be under the jurisdiction of Malta.

2. A video-sharing platform provider which is not established on Maltese territory pursuant to the preceding sub-article shall be deemed to be established on the territory of a Member State 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.

For the purposes of applying sub-article 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.

(3) For the purposes of applying sub-article 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.

(4) Articles 8A, 19, 20, 21 and 22 of the Electronic Communications Act and Articles 3 and 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 sub-article 2 of this Article.

(5) A video-sharing platform provider established or deemed to be established in Malta shall notify the Authority in writing by means of a letter addressed to the Chairman of the Authority, which notification shall include:

- (a) In the case of a natural person, the name, surname and address; identity card number, passport number or any other identification document as may be accepted by the Authority.
- (b) In the case of a legal person, the name and address of the company and of the registered office.

(6) The Authority shall establish and maintain an up-to-date list of the video-sharing platform providers established or deemed to be established in Malta and indicate on which of the criteria set out in the preceding sub-articles their jurisdiction is based. The Authority is entitled to declare, *ex officio*, a video-sharing platform provider as an established provider in Malta.

**16AB** (1) Without prejudice to Articles 19, 20, 21 and 22 of the Electronic Communications Act and Articles 12 to 15 of Directive 2000/31/EC, video-sharing platform providers under the jurisdiction of Malta shall take the necessary measures to protect:

- (a) minors from programmes, user-generated videos and audiovisual commercial which may impair their physical, mental or moral development in accordance with Article 16JA of this Act;
- (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 and in Book First, Second Part, Title IX sub-title IVA of the Criminal Code, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council and in Book First, Second Part, Title VIII sub-title of the Criminal Code and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA and as also provided for in Articles 83B and 83C of the Criminal Code.

(2) Video-sharing platform providers under the jurisdiction of Malta shall comply with the requirements set out in Article 16K of this Act with respect to audiovisual commercial communications that are marketed, sold or arranged from the video-sharing platform providers.

(3) Video-sharing platform providers under the jurisdiction of Malta shall take the appropriate measures to comply with the requirements set out in Article 16K 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.

(4) Video-sharing platform providers shall clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared under sub-article 6 subparagraph (c) of this act or the provider has knowledge of that fact.

(5) The Authority shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 16Q of this act 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.

(6) For the purposes of sub-articles 1 to 3 of this article, 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. 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 sub-article 1 of this article;

(b) including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 16K 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 sub-article 1 of this article provided on its platform;

(e) establishing and operating systems through which video-sharing platform providers explain to users of videosharing platforms what effect has been given to the reporting and flagging referred to in sub-article (d) of this Act;

(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 sub-article 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;

(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 sub-articles (d) to (h) of this article;

(j) providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.

(7) Personal data of minors collected or otherwise generated by video-sharing platform providers pursuant to sub-articles 6(f) and 6(h) of this article shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

(8) For the purposes of the protection of minors, provided for in sub-article 1(a) of this Article, the most harmful content shall be subject to the strictest access control measures.

(9) The Authority 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 and with Article 22 of the Electronic Communications Act.

(10) The Authority shall assess the appropriateness of the measures referred to in sub-article 3 of this article taken by video-sharing platform providers and has the right to issue all directives which it considers necessary or expedient for the proper execution referred to in this Article.

(11) In case of disputes arising between users and video-sharing platform providers relating to the application of the provisions of this article, the provisions on the investigation of complaints shall apply in accordance with article 21A of this act.

Provided that this shall not deprive the rights of the user to have recourse to any other means that may offer legal protection afforded including, if necessary, recourse to the Courts of ordinary jurisdiction and Courts of Constitutional jurisdiction where this is permitted by law.

### **Addition of new article immediately after Article 3 of the Third Schedule of the principle act**

32. Immediately after Article 3 of the Third Schedule of the principle act there shall be added the following new Article:

All forms of casino advertising, whether those operating from a place accessible to the public as well as those operating through a website shall be prohibited on all radio services;

### **Substitution of Article 6 of the Third Schedule of the principle act**

33. Article 6 of the Third Schedule of the principle act shall be substituted by the following:

**6.** Isolated television advertising and teleshopping spots shall be admissible in sports events. Isolated television advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

#### **Substitution of Article 11 of the Third Schedule of the principle act**

34. Article 11 of the Third Schedule of the principle act shall be substituted by the following:

**11.** The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising, teleshopping, or both, once for each scheduled period of at least 30 minutes.

#### **Substitution of Articles 15 and 16 of the Third Schedule of the principle act**

35. Articles 15 and 16 of the Third Schedule of the principle act shall be substituted by the following:

**15.** The proportion of television advertising spots and teleshopping spots within the period between 6.00 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 24.00 shall not exceed 20% of that period.

**16.** Paragraph 15 shall not apply for:

- (a) announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes and audiovisual media services from other entities belonging to the same broadcasting group;
- (b) sponsorship announcements;
- (c) product placements;
- (d) neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots.;

#### **Substitution of Article 35 of the Third Schedule of the principle act**

36. Article 35 of the Third Schedule of the principle act shall be substituted by the following:

**35.** (1) Teleshopping spots may not be broadcast before or after children's programme.

(2) The transmission of children's programmes may be interrupted by television advertising once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. The transmission of teleshopping shall be prohibited during children's programmes. No television advertising or teleshopping shall be inserted during religious services.

**Substitution of Article 35 of the Third Schedule of the Broadcasting Act**

37. The Fifth Schedule of the principle act shall be substituted by the following:

## FIFTH SCHEDULE

### Article 41(1)

FIRST COLUMN Provision	SECOND COLUMN Penalty €	THIRD COLUMN Reduced Penalty €
Article 10(6)(a)	1,160	930
Article 10(7)	460	350
Article 10(8)	230	170
Article 10(10)	1,160	930
Article 13(2)(a)	1,160	930
Article 13(2)(b)	1,160	930
Article 13(2)(c)	1,160	930
Article 13(2)(d)	1,160	930
Article 13(2)(e)	1,160	930
Article 13(2)(f)	1,160	930
Article 13(3)	230	170
Article 15	4,660	4,190
Article 16	2,330	1,750
Article 16(2)	1,160	930
Article 16B (2)	1,160	930
Article 16C (2)	1,160	930
Article 16C (3)	1,160	930
Article 16E	1,160	930
Article 16F	1,160	930
Article 16H(1)	2,230	1,750
Article 16H(7)	2,330	1,750
Article 16J	2,330	1,750
Article 16JA	1,160	930
Article 16JB	1,160	930
Article 16JC	1,160	930
Article 16K	2,330	1,750
Article 16L	2,330	1,750
Article 16M	2,330	1,750
Article 16N	2,330	1,750
Article 16O	2,330	1,750
Article 16Q	2,330	1,750
Article 16AA	34,950	23,300
Article 16AB	34,950	23,300
Article 18(3)	2,330	1,750
Article 18(4)	2,330	1,750
Article 19(1)	2,330	1,750
Article 19(3)	2,330	1,750
Article 19(4)	2,330	1,750
Article 19(5)	2,330	1,750
Article 19(6)	2,330	1,750
Article 19(7)	2,330	1,750
Article 19(11)(a)	2,330	1,750
Article 19(11)(b)	2,330	1,750

Article 19(11)(c)

2,330

1,750

Article 20(1)(a) & (2)	2,33 0	1,750
Article 20(1)(b) & (2)	2,33 0	1,750
Article 20(3)	2,33 0	1,750
Article 20(4)	2,33 0	1,750
Article 21(1)(a)	1,75 0	1,280
Article 21(1)(b)	1,75 0	1,280
Article 21(2)	1,75 0	1,280
Article 21(3)(a)	1,75 0	1,280
Article 21(3)(b)	1,75 0	1,280
Article 21A(4)	470	350
Article 22(1)	2,33 0	1,750
Article 22(2)	2,33 0	1,750
Article 23(1)	1,16 0	930
Article 23(2)	1,75 0	1,280
Article 23(3)(a)	1,75 0	1,280
Article 23(3)(b)	1,75 0	1,280
Article 23(4)(a)	1,75 0	1,280
Article 23(4)(b)	1,75 0	1,280
Article 23(4)(c)	1,75 0	1,280
Article 23(5)	1,75 0	1,280
Article 23(6)	1,75 0	1,280
Article 23(7)	1,75 0	1,280
Article 34(1)(a)	1,75 0	1,280
Article 34(1)(b)	1,75 0	1,280
Article 40(1)	2,33 0	1,750

First Schedule - for any violation of any  
of the sub-paragraphs of paragraphs 1, 2

and 3 of the said Schedule	1,160	930
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Third Schedule - for any violation of any of the paragraphs of the said Schedule 930	1,160	
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Fourth Schedule - for not installing or for not using a delay mechanism during phone-in programmes 930	1,160	
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Advertising, Sponsorship and Teleshopping (Protection of Consumers' Interest) (Television Broadcasting Injunction) Order 23,300	34,950	
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Regulations 5 and 6 of the Broadcasting (Jurisdiction and European Co-Operation) Regulations - S.L. 350.04 23,300	34,950	
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Requirements as to Standards and Practice  
applicable to News Bulletins and Current  
Affairs Programmes - S.L. 350.14

Section 1	1,750	1,280
Section 2	1,750	1,280
Section 3	1,160	930
Section 4	1,750	1,280
Section 5	1,750	1,280
Section 6	470	350
Section 7	1,160	930
Section 8	1,160	930
Section 9	1,750	1,280
Section 10	1,160	930
Section 11	1,160	930
Section 12	1,750	1,280
Section 13	1,160	930
Section 14	1,160	930
Section 15	1,160	930
Section 16	1,750	1,280

Requirements as to Standards and Practice applicable to Participation in Media Programmes of Vulnerable Persons - S.L.350.15	2,330	1,750
Requirements as to Standards and Practice applicable to the Coverage of Tragedies in Broadcasting - S.L.350.16	2,330	1,750
Requirements as to Standards and Practice applicable to Disability and its Portrayal in the Broadcasting Media - S.L.350.17	2,330	1,750
Requirements as to Standards and Practice applicable to the Family Viewing and Listening - S.L.350.18	1,160	930
Requirements as to Standards and Practice applicable to Phone-in Programmes aired on the Broadcasting Media - S.L.350.19	1,160	930
Requirements as to Standards and Practice applicable to Crawls and Captions in Television Programmes - S.L.350.20	1,160	930
Requirements as to Standards and Practice applicable to various types of Polls broadcast on Radio and Television Services - S.L.350.21	1,160	930
Requirements as to Standards and Practice applicable to the Conduct of Competitions and the Award of Prizes - S.L.350.22	1,160	930
Requirements and Methods of Advertising applicable to Tattoo Advertising - S.L.350.23	1,160	930

Requirements and Methods of Advertising applicable to Alcoholic Drink Advertising, Sponsorship and Teleshopping - S.L.350.24	1,160	930
Requirements and Methods of Advertising applicable to Gambling Advertisements - S.L.350.25	1,160	930
Requirements as to Standards and Practice applicable to the Promotion of Racial Equality - S.L.350.26	1,160	930
Requirements as to Standards and Practice applicable to the Price of Telephone Calls and SMSs in the Broadcasting Media - S.L.350.27	1,160	930
Requirements as to Standards and Practice on Programmes Involving the Participation of Certain Health Care Professionals in the Broadcasting Media and Requirements as to Advertisements, Methods of Advertising and Directions applicable to Medicinal Products and Treatments - S.L.350.30	1,160	930
Requirements as to Standards and Practice as to Advertisements, Method of Advertising and Directions on Public Collections on the Broadcasting Media, - S.L.350.31	1,160	930

1. The Authority may inflict on any person who has violated any of the provisions listed in the first column of this Schedule the corresponding penalty listed in the Second Column of this Schedule: provided that where the Authority is of the opinion from the circumstances of the case that the gravity of the offence is one which warrants

the imposition of a higher penalty, the Authority may award a penalty which is not in excess of the amount established in first proviso to article 41(4)(c) and article 16D(3) of this Act.

2. Where any person who is served with a notice in terms of article 41 of this Act elects to pay the penalty without contestation, he shall be liable to pay the penalty indicated in the third column of this Schedule.

3. In the case of a second or subsequent violation of any provision of this Schedule, the penalties listed in the second and third columns of this Schedule shall be increased by twenty percent for each and every subsequent violation.”

### **Transitory and saving provision.**

3. (1) Nothing in regulation 2 shall invalidate any procedure whether written or oral which may have been made before the coming into force of the Fifth Schedule of the Broadcasting Act as substituted by regulation 2 aforesaid and which was valid according to the law as in force on the date when made.

(2) Without prejudice to sub-regulation (3), any charges issued by the Chief Executive in terms of article 41 of the Act referring to the Fifth Schedule to the Broadcasting Act and any procedure made by virtue or under the provisions of that article and Schedule, shall remain valid in the same manner as if it were done under the provisions of that article and Schedule as amended by these regulations.

(3) Any charge issued by the Chief Executive in terms of article 41 of the Broadcasting Act referring to the Fifth Schedule of the said Act which has not been admitted to by the person against whom the charge has been issued or which has not been disposed of definitively by the Broadcasting Authority prior to the date of entry into force of regulation 2, shall continue to be regulated by the Fifth Schedule as in force at the time prior to the said date of entry into force of regulation 2.

### **Objectives and Reasons**

The objectives and rationale of this bill is to amend the Broadcasting Act to incorporate Directive (UE) 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 provisions of the audiovisual media services (Audiovisual Media Services Directive) in the light of changing marketing realities.

