



STATUTORY INSTRUMENTS.

S.I. No. 557 of 2024

EUROPEAN UNION (AUDIOVISUAL MEDIA SERVICES)
REGULATIONS 2024

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I, CATHERINE MARTIN, Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Articles 1, 2, 3, 4, 28a and 30a of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010¹ as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018², hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Audiovisual Media Services) Regulations 2024.

Interpretation

2. (1) In these Regulations -

“Act of 2009” means the Broadcasting Act 2009 (No. 18 of 2009);

“audiovisual media service” has the same meaning as it has in the Act of 2009;

“Commission” means Coimisiún na Meán;

“Directive” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010¹ on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018²;

“media service code” has the same meaning as it has in the Act of 2009;

“media service provider” has the same meaning as it has in the Act of 2009;

“media service rules” has the same meaning as it has in the Act of 2009;

“Minister” means the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media;

“video-sharing platform service” has the same meaning as it has in the Act of 2009.

(2) In these Regulations the question of whether a provider is under the jurisdiction of the State (or another Member State) is to be determined-

¹ OJ No. L95, 15.4.2010, p. 1

² OJ No. L303, 28.11.2018, p. 69

- (a) in respect of a media service provider, in accordance with section 2A of the Act of 2009, and
 - (b) in respect of a provider of a video-sharing platform service, in accordance with section 2B of the Act of 2009.
- (3) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning that it has in the Directive.

Amendment of section 2 of Act of 2009

3. Section 2(1) of the Act of 2009 is amended-
- (a) in the definition of “audiovisual commercial communication” by the insertion of “, including sponsorship and product placement” after “with or without sound”,
 - (b) by the substitution of the following definition for the definition of “audiovisual media service”:
- “ ‘audiovisual media service’ means:
- (a) a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where -
 - (i) the principal purpose of the service is devoted to, or
 - (ii) the principal purpose of a dissociable section of the service is devoted to,
 providing audiovisual programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate, or
 - (b) an audiovisual commercial communication;”,
 - (c) by the insertion of the following definition after the definition of “personal data”:
- “ ‘product placement’ means any form of audiovisual commercial communication consisting of 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;”, and
- (d) by the insertion of the following definition after the definition of “sound broadcasting service”:
- “ ‘sponsorship’ means any contribution made by a public or private undertaking or natural person 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 the name, trade mark, image, activities or products of the undertaking or person.”.

Disagreements regarding jurisdiction over media service provider

4. Where there is a disagreement with one or more than one other Member State in relation to whether a media service provider is under the jurisdiction of the State or another Member State for the purposes of Article 3 or 4 of the Directive, the Minister shall notify the European Commission of the disagreement without undue delay.

Disagreements regarding jurisdiction over provider of video-sharing platform service

5. Where there is a disagreement with one or more than one other Member State in relation to whether the provider of a video-sharing platform service is under the jurisdiction of the State or another Member State for the purposes of Article 28a of the Directive, the Minister shall notify the European Commission of the disagreement without undue delay.

Freedom of reception and restriction of retransmission

6. (1) Freedom of reception in the State of audiovisual media services retransmitted from another Member State shall be ensured and such retransmission shall not be restricted for reasons which fall within the fields coordinated by the Directive.

(2) A measure restricting retransmission in the State shall be provisional and, without prejudice to paragraph (5), may only be imposed where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State-

- (a) manifestly, seriously and gravely infringes a media service code or media service rule, in so far as the media service code or media service rule provides for the matters required to be provided for in Article 6(1)(a) or Article 6a(1) of the Directive, or
- (b) prejudices, or presents a serious and grave risk of prejudice to, public health.

(3) A provisional measure referred to in paragraph (2) may only be imposed where-

- (a) during the previous 12 months, the media service provider has on at least two prior occasions committed an infringement or caused a prejudice or risk of prejudice referred to in paragraph (2),
- (b) the Minister has notified the media service provider, the Member State having jurisdiction over that provider and the European Commission in writing of the alleged infringement, prejudice or risk of prejudice referred to in paragraph (2) and of the provisional measures (which shall be proportionate) that are intended to be imposed should any such infringement, prejudice or risk of prejudice occur again,
- (c) the right of defence of the media service provider has been respected and, in particular, as part of the notice to the media

service provider referred to in subparagraph (b), the Minister has stated that the media service provider may make submissions in relation to the alleged infringement, prejudice or risk of prejudice to the Minister within a reasonable period, which shall be specified in the notice,

- (d) the Minister has considered submissions made in accordance with subparagraph (c) (if any), and has provided a copy of such submissions to the person that proposes to impose the provisional measure and that person has also considered the submissions, and
- (e) consultations between the Minister and the Member State having jurisdiction over the media service provider and the European Commission have not resulted in an amicable settlement of the matter within one month of the European Commission's receipt of the notice referred to at subparagraph (b).

(4) Where the European Commission decides, in accordance with Article 3(2) of the Directive, that the measure referred to in paragraph (2) is not compatible with the law of the European Union, the person that imposed the measure shall put an end to the measure as a matter of urgency.

(5) A measure restricting retransmission in the State shall be provisional and, without prejudice to paragraph (2), may only be imposed where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State-

- (a) manifestly, seriously and gravely infringes a media service code or media service rule, in so far as the media service code or media service rule provides for the matters required to be provided for in Article 6(1)(b) of the Directive, or
- (b) prejudices, or presents a serious and grave risk of prejudice to, public security, including the safeguarding of national security and defence.

(6) A provisional measure referred to in paragraph (5) may only be imposed where-

- (a) during the previous 12 months, the infringement, prejudice or risk of prejudice referred to in paragraph (5) has occurred on at least one prior occasion,
- (b) the Minister has notified the media service provider, the Member State having jurisdiction over that provider and the European Commission in writing of the alleged infringement, prejudice or risk of prejudice and of the measures (which shall be proportionate) that are intended to be imposed should any such infringement, prejudice or risk of prejudice occur again,
- (c) the right of defence of the media service provider has been respected and in particular, as part of the notice to the media service provider referred to in subparagraph (b), the Minister has stated that the media service provider may, within a reasonable period, which shall be specified in the notice, make submissions

in relation to the alleged infringement, prejudice or risk of prejudice to the Minister, and

- (d) the Minister has considered submissions made in accordance with subparagraph (c) (if any) and has provided a copy of such submissions to the person that proposes to impose the measure and that person has also considered the submissions.

(7) Where the European Commission decides, in accordance with Article 3(3) of the Directive, that the measure referred to in paragraph (5) is not compatible with the law of the European Union, the person that imposed the measure shall put an end to the measure as a matter of urgency.

(8) In urgent cases and no later than one month after the alleged infringement, prejudice or risk of prejudice referred to in paragraph (5), a measure restricting the retransmission of an audiovisual media service in the State by a provider of an audiovisual media service under the jurisdiction of another Member State may be provisionally imposed notwithstanding that one or more than one of the conditions referred to in subparagraph (a) or (b) of paragraph (6) has not been satisfied.

(9) Where a measure is provisionally imposed in accordance with paragraph (8), the Minister shall, as soon as is practicable, notify the alleged infringement, prejudice or risk of prejudice and the provisional imposition of the measure to the European Commission and to the Member State under whose jurisdiction the media service provider falls, and shall indicate the reasons for the urgency.

(10) Where the European Commission decides, in accordance with Article 3(5) of the Directive, that a measure provisionally imposed in accordance with paragraph (8) is not compatible with the law of the European Union, the person that imposed the measure shall put an end to the measure as a matter of urgency.

Procedure for application of more detailed or stricter rules

7. (1) Where the State requires media service providers under its jurisdiction to comply with a more detailed or stricter rule of general public interest in the fields coordinated by the Directive, and the Minister assesses that a media service provider under the jurisdiction of a Member State other than the State provides an audiovisual media service which is wholly or mostly directed towards the State, the Minister may-

- (a) identify a problem arising due to the fact that the media service provider is not complying with the rule, and
- (b) request the Member State to address the problem.

(2) Where the Minister makes a request under paragraph (1) to a Member State, the Minister shall cooperate sincerely and swiftly with the Member State for the purposes of achieving, as soon as is practicable, a solution to the problem that is satisfactory to the Minister and the Member State.

(3) The Minister may, following the making of a request under paragraph (1), adopt a measure referred to in paragraph (4) in respect of the media service provider concerned where-

- (a) the Minister assesses that the results achieved pursuant to the request, and notified to the State by the other Member State, are not satisfactory to the Minister, and
- (b) the Minister has provided evidence to the Member State and the media service provider showing that the media service provider has established itself in the Member State in order to circumvent the rules which would be applicable to it if it were under the jurisdiction of the State, and such evidence allows for that circumvention to be reasonably established without the need to prove the media service provider's intention to circumvent the rules.

(4) A measure adopted under paragraph (3) may be one or more than one of the following and shall be objectively necessary, applied in a non-discriminatory manner and proportionate to the objectives which it pursues-

- (a) a request that the media service provider comply with a specified provision of a media service code,
- (b) a request that the media service provider comply with a specified provision of a media service rule,
- (c) a request that the media service provider comply with a specified provision of Part 3A of the Act of 2009, or
- (d) a request that the media service provider comply with a specified provision of Part 3B of the Act of 2009.

(5) The Minister may adopt a measure under paragraph (3) only where-

- (a) the Minister has notified the European Commission, the media service provider and the Member State of-
 - (i) its intention to adopt the measure, and
 - (ii) the reasons and evidence on which the assessment of the Minister is based,
- (b) the Minister has respected the right of defence of the media service provider and, in particular, stated in the notice to the media service provider referred to in subparagraph (a) that the media service provider, within a reasonable period, which shall be specified in the notice, may make submissions to the Minister in relation to the alleged circumvention and the intended measure,
- (c) the Minister has considered submissions made in accordance with subparagraph (b) (if any), and
- (d) the European Commission has decided, in accordance with Article 4(4)(c) of the Directive, that the measure is compatible with the law of the European Union and, in particular, that the assessments referred to in paragraph (1) and (3)(a) are correctly founded.

(6) Where the European Commission decides that the measure is not compatible with the law of the European Union, the Minister shall not adopt the measure.

(7) Where the State receives a request from a Member State in accordance with Article 4(2) of the Directive, the Minister shall cooperate with the Member State sincerely and swiftly with a view to achieving a solution to the problem that is satisfactory to the Member State and the Minister as soon as is practicable.

(8) Where the State receives a substantiated request from a Member State in accordance with Article 4(2) of the Directive, the Minister shall-

- (a) request in writing that the media service provider comply with the more detailed and stricter rules of general public interest identified in the first-mentioned request within the period specified in that request,
- (b) inform the Member State of the steps taken to address the problem identified as soon as practicable after the step is taken, and
- (c) within two months of the receipt of the first-mentioned request, inform the Member State and the European Commission of the results of the steps taken and, where a solution to the problem identified in the first-mentioned request could not be found, the reasons a solution could not be found.

(9) The Minister may ask the Contact Committee established under Article 29 of the Directive to examine a problem referred to in paragraph (1) or (7) at any time.

Cooperation of national regulatory authorities or bodies

8. (1) The Commission and the Minister shall each cooperate and exchange information with the European Commission and national regulatory authorities or bodies of Member States other than the State as necessary for the purposes of the application of the Directive, including in particular for the purposes of-

- (a) determining the Member State under whose jurisdiction a media service provider or provider of a video-sharing platform service falls,
- (b) engagement in relation to provisional derogations under Article 3 of the Directive, and
- (c) engagement in relation to the application of more detailed or stricter rules under Article 4 of the Directive.

(2) The Commission shall, where it receives information from a media service provider under the jurisdiction of the State advising that the media service provider will provide a service wholly or mostly directed at the audience of another Member State, as soon as is practicable after receipt of the information, inform the national regulatory authority or body of the other Member State of that fact.

(3) Where the Commission receives a request from a national regulatory authority or body of another Member State whose territory is targeted by a media service provider under the jurisdiction of the State for information concerning the activities of the media service provider, the Commission shall, without

prejudice to the periods referred to in Article 3 or Article 4 of the Directive, endeavour to respond to the request within two months of the receipt of the request.

(4) Where the territory of the State is targeted by a media service provider under the jurisdiction of another Member State, the Commission may request information from the national regulatory authority or other body of the other Member State concerning the activities of the media service provider and, where the Commission makes such a request, the Commission shall, where requested to do so by the national regulatory authority or other body, provide any information to the regulatory authority or body that may assist that regulatory authority or body in addressing the first-mentioned request.

Revocation

9. Regulation 4 of the European Communities (Audiovisual Media Services) Regulations 2010 (S.I. No. 258 of 2010) is revoked.



L.S.

GIVEN under my Official Seal,
22 October, 2024.

CATHERINE MARTIN,
Minister for Tourism, Culture, Arts, Gaeltacht, Sport and
Media.

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