

242/2022 Coll.

ACT

of 10 August 2022

**on video-sharing platform services and amending certain related acts (the
Video-Sharing Platform Services Act)**

The Parliament has agreed on the following Act of the Czech Republic:

PART ONE

VIDEO-SHARING PLATFORM SERVICES

Section 1

Subject of the Act

This Act transposes the relevant European Union regulations¹⁾ and regulates the conditions for the provision of the video-sharing platform services.

Section 2

Terms and Definitions

(1) For the purposes of this Act:

- a) video-sharing platform service means an information society service under the Act on Certain Information Society Services²⁾, the main purpose of which or the main purpose of a separable part thereof, or the essential function of which is the provision of programmes or video recordings created by users, for which the video-sharing platform provider does not bear editorial responsibility³⁾ and only determines their arrangement which may also be provided by automatic means or algorithms, in particular, by displaying, tagging or sequencing, to the general public for the purpose of information, entertainment or education via electronic communications networks,
- b) the video-sharing platform provider means the entity providing the video-sharing platform service,
- c) platform user means a person who has created a video recording, uploaded it to a video-sharing platform itself or by another person, as well as a person that has uploaded a video recording created by another platform user to a video-sharing platform,
- d) end service recipient is a person who uses the video-sharing platform to search for programmes and video content for information, entertainment or education,
- e) video created by platform user means moving images with or without sound which, regardless of its duration, constitutes a stand-alone item created by a platform user and uploaded by that or another platform user to a video-sharing platform,

f) Group means the controlling entity, all of its business corporations controlled by it and all other business corporations that are economically and organisationally and legally linked to them.

(2) The fulfilment of the essential function condition referred to in Section (1)(a) shall be assessed in accordance with the guidelines issued by the European Commission and published by the Council for Radio and Television Broadcasting (hereinafter referred to as the “Council”) on its website in the wording published in the Official Journal of the European Union⁴.

(3) The video-sharing platform service provider shall be editorially responsible for the content it offers to the public on the video-sharing platform. In relation to this content, the video-sharing platform service provider shall be subject to the provisions of Section 2(1)(d), Section 6(2), Section 6a and Section 12(1)(d) of the Act on the provision of on-demand audiovisual media services⁵.

Section 3

Scope of the Act

(1) The video-sharing platform service provider shall be subject to this Act if it can be considered to be established in the Czech Republic.

(2) A video-sharing platform service provider shall be deemed to be established in the Czech Republic if it carries on business in the Czech Republic through a permanent establishment; if a legal entity provides the video-sharing platform services, the conditions of establishment shall be met even if it is established for a fixed period of time.

(3) If the video-sharing platform service provider cannot be considered to be established in the Czech Republic pursuant to subsection 2, this Act shall apply to it on the provision that as established in the Czech Republic is considered

a) its parent corporation or subsidiary corporation; or

b) another business corporation of the Group which the video-sharing platform provider is a part of.

(4) If the parent business corporation, subsidiary business corporation or other business corporations of the Group which the video-sharing platform service provider is a part of are established in the Czech Republic and at the same time in one or more other Member States of the European Union or other States which are contracting parties to the Agreement on the European Economic Area, the video-sharing platform service provider shall be deemed to be established in the Czech Republic if its parent business corporation is established there. If the parent business corporation is not established in the Czech Republic or in another Member State of the European Union or another State that is a contracting party to the Agreement on the European Economic Area, the video-sharing platform service provider shall be deemed to be established in the Czech Republic if its subsidiary business corporation is established there. If the subsidiary business corporation is not established in the Czech Republic or in another Member State of the European Union or in another State that is a

contracting party to the Agreement on the European Economic Area, the video-sharing platform service provider shall be deemed to be established in the Czech Republic if another business corporation of the Group which the video-sharing platform service provider is a part of is established in the Czech Republic.

(5) Where there are several subsidiary business corporations of the Group which the video-sharing platform service provider is a part of and each of them is established in another Member State of the European Union or another State that is a contracting party to the Agreement on the European Economic Area, the video-sharing platform service provider shall be deemed to be established in the Czech Republic if any of these subsidiary business corporations has commenced its activities in the Czech Republic for the first time and at the same time conducts business through a permanent establishment in the Czech Republic. If there are several other business corporations belonging to the Group which the video-sharing platform service provider is a part of and each of them is established in another Member State of the European Union or another State that is a contracting party to the Agreement on the European Economic Area, the video-sharing platform service provider shall be deemed to be established in the Czech Republic if any of these business corporations has started its activities there for the first time and is also doing business through a permanent establishment in the Czech Republic.

(6) This Act shall not apply to the video-sharing platform services which are intended exclusively for the provision of audiovisual content in third countries and which are not, directly or indirectly, used by the general public in one or more Member States of the European Union or other States which are contracting parts to the Agreement on the European Economic Area.

Section 4

Supervisory Authority

The authority competent to supervise over compliance with this Act (hereinafter referred to as the “Supervisory Authority”) shall be the Council in matters falling within its competence under Section 5.

Section 5

Competence of the Council

Council

- a) maintains a list of video-sharing platform service providers (hereinafter referred to as the “list of platform service providers”),
- b) supervises over the fulfilment of the obligations of video-sharing platform service providers in the preparation and implementation of protection measures pursuant to Section 7 and 8,
- c) imposes remedial measures on video-sharing platform service providers under this Act,

d) discusses offences and impose administrative penalties under this Act.

Section 6

List of Platform Service Providers

(1) The Council shall maintain and update the list of platform service providers established or deemed to be established in the Czech Republic, indicating for each provider which of the criteria under Section 3(2) to (5) establishes the jurisdiction of the Czech Republic over that provider. The list of platform service providers and its updates shall be forwarded by the Council to the European Commission for publication in a centralised database at times and in ways to be determined by the European Commission.

(2) A person who intends to provide a video-sharing platform service shall give the Council at least 15-day notice before the date on which the service is to commence, whereas such notice shall contain

- a) the name of the video-sharing platform service,
- b) details of the video-sharing platform service provider
 1. in the case of a natural person, the name and surname, or business name, and address of residence,
 2. in the case of a foreign natural person, the name, surname, or business name, if not identical to the name under a), nationality, address of residence outside the Czech Republic, address of the place of residence in the Czech Republic,
 3. in the case of a legal entity, the business or company name, if not identical to the name referred to in point a), the registered seat address, in the case of a natural person or natural persons who are members of its statutory body, the name, surname, address of residence or address of stay in the Czech Republic, if permitted, and in the case of a legal entity that is a member of the statutory body, the business or company name and the registered seat address,
- c) the address of the registered seat of the video-sharing platform service provider, unless it is identical to the address of residence referred to in point b)(1) or (2),
- d) its contact details, in particular, its e-mail address,
- e) the entry in the commercial register or other similar register,
- f) an indication of which of the criteria under Section 3(2) to (5) establishes the jurisdiction of the Czech Republic over the notifier, and the supporting documents,
- g) protection measures according to Section 8, and
- h) the date of commencement of the video-sharing platform service.

(3) If the notification of the data referred to in subsection 2 is deficient, the Council shall invite the person who made the notification to remedy the deficiencies within 30 days as of the date of delivery of the invitation. Should this term not be complied with, the notification shall be deemed not to have been made and the Council shall notify the person who made it of this fact.

(4) The Council shall enter the information referred to in subsection 2 in the list of platform service providers within 30 days as of the date of its notification and shall also send to the person who made the notification a confirmation of the entry in the list of platform service providers, indicating the date on which the entry was made.

(5) Where the provision of a video-sharing platform service has not commenced within 1 year as the date of registration in the list of platform service providers or has been interrupted for a period exceeding 1 year, it shall be deemed to have ceased on the last day of that period. The Council shall enter that fact in the list of platform service providers and notify the video-sharing platform service provider within 30 days of becoming aware of it.

(6) Where an entity whose provision of a video-sharing platform service has been terminated under subsection 5 intends to resume the provision of that service, it shall notify the Council of that fact as of the date on which the resumption of the provision of the video-sharing platform service. In the notification, it shall communicate any change in the data referred to in subsection 2(a) to (g), specifying the date of the service provision resumption.

(7) The video-sharing platform service provider shall notify the Council in writing of a change in the data referred to in subsection 2 and of the interruption or termination of the provision of the video-sharing platform service within 10 days as of the date on which the data changed or the video-sharing platform service was interrupted or terminated. The Council shall enter the change of data referred to in subsection 2 and the interruption or termination of the service provision in the list of platform service providers and shall also notify the person who made the notification.

(8) Everyone has the right to consult the list of platform service providers and to obtain extracts or copies thereof.

(9) The Council shall publish the information referred to in subsection (2)(a) to (d) on its website.

Section 7

Protection Measures

(1) Without prejudice to the provisions of Sections 3 to 6 of the Act on Certain Information Society Services, the video-sharing platform service provider shall take measures to protect

a) minors from programmes, video recordings made by the platform users and commercial communications⁶⁾ which may impair their physical, mental or moral development; such video recordings, programmes and audiovisual commercial communications shall not be accessible in such a way that minors would normally be able to see or hear them; measures to protect minors shall include, in particular, age verification tools or other technical measures,

b) the general public from programmes, video recordings created by the platform users and commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group on the grounds of sex, race, colour, ethnic or social

origin, genetic features, nationality, language, religion or belief, political or other opinion, membership of a national minority, property, birth, birthplace, disability, age or sexual orientation; and

c) the general public from programmes, video recordings created by the platform users and commercial communications with content, the distribution of which constitutes a criminal offence, in particular, public incitement to commit a terrorist offence⁷⁾, offences relating to child pornography⁸⁾ and offences relating to racism and xenophobia⁹⁾.

(2) Commercial communications which the video-sharing platform service provider itself markets, sells or contracts

a) shall be easily recognisable and shall not be a surreptitious commercial communication,

b) shall not use subliminal techniques,

c) shall not prejudice respect for human dignity,

d) shall not contain or promote discrimination on the grounds of sex, race or ethnic origin, citizenship, religion or belief, disability, age or sexual orientation; and

e) shall not encourage behaviour prejudicial to health or safety or encourage behaviour that is grossly prejudicial to the environmental protection.

(3) The video-sharing platform service provider shall not place on the platform any form of commercial communication which it markets, sells or contract, if it relates to cigarettes and other tobacco products or electronic cigarettes and their refills.

(4) The commercial communication which the video-sharing platform service provider itself markets, sells or contracts concerning alcoholic beverages shall not be specifically targeted at minors and shall not encourage the immoderate consumption of such beverages.

(5) The video-sharing platform service provider shall not place on the platform any form of commercial communication which it markets, sells or contracts, if the commercial communication concerns medicinal products and medical treatments which are available in the Czech Republic only on prescription.

(6) A commercial communication which the video-sharing platform service provider itself markets, sells or contracts shall not physically, psychologically or morally endanger minors by

a) directly encouraging minors to buy or hire a product or service, taking advantage of their inexperience or credulity,

b) directly encourages minors to persuade their parents or third parties to purchase the advertised goods or services,

c) taking advantage of the special trust which minors place in their parents, their teachers or other persons; or

d) unreasonably showing minors in dangerous situations.

(7) The video-sharing platform service provider shall take measures to apply the protection under subsections 2 to 6 also to commercial communications which it does not itself market, sell or contract, adequate to the limited control which the video-sharing platform may exercise over those commercial communications.

(8) Where a platform user that uploads a video recording made by it or by another platform user to a video-sharing platform notifies that the video recording contains a commercial communication, the video-sharing platform service provider shall immediately inform the other platform users. Where the video-sharing platform service provider becomes aware by other means that specific programmes or video recordings created by the platform users contain commercial communications, it shall proceed mutatis mutandis in accordance with the first sentence.

Section 8

Essentials of Protection Measures

(1) A video-sharing platform service provider shall take protection measures in accordance with Section 7 having regard to the nature of the content in question and the harm it may cause, the characteristics of the categories of persons to be protected, and the rights and legitimate interests at stake, including its own interests, the interests of the platform users who create or upload the content in question and the public interest.

(2) The protection measures referred to in subsection 1 shall be feasible and proportionate to the scale and nature of the video-sharing platform service provided and shall not lead to filtering of uploaded content or to preliminary control measures. The most objectionable content that may impair the physical, psychological or moral development of minors, such as pornography or gross self-inflicted violence, shall be subject to the strictest measures to control access by the platform users.

(3) The protection measures referred to in subsection 1 shall, where appropriate, include

a) incorporating of the requirements set out in Section 7(1) in the terms and conditions of the video-sharing platform service and application thereof,

b) incorporating of the requirements set out in Section 7(7) in the terms and conditions of the video-sharing platform service and application thereof,

c) a function for users who upload video recordings created by the platform users to the platform to notify whether those video recordings contain audiovisual commercial communications, if those users of the platform know or can reasonably be expected to know,

d) the establishment and operation of transparent and user-friendly mechanisms allowing the platform users to notify or flag content to the video-sharing platform provider pursuant to Section 7(1) that is provided on its platform,

e) the establishment and operation of systems whereby the video-sharing platform service

provider informs the platform users about the handling of their notification or flagging of content under point d) without undue delay, but no later than 60 days from the date of notification or flagging of the content,

f) the establishment and operation of age verification systems for the platform users in the case of content that may impair the physical, mental or moral development of minors,

g) the establishment and operation of easy-to-use systems enabling the end recipients of the service to evaluate content in line with Section 7(1),

h) the provision of parental control systems, under the control of the end recipients of the service, in relation to content that may impair the physical, mental or moral development of minors,

i) the establishment and operation of transparent, easy-to-use and effective procedures for handling and settlement of complaints from platform users addressed to the video-sharing platform service provider in relation to the implementation of the protection measures referred to in points d) to h), including information for platform users about the possibility of resolving the matter out of court as a consumer dispute before the Czech Trade Inspection Authority pursuant to the Consumer Protection Act¹⁰⁾, and

j) ensuring effective media literacy measures and tools and raising awareness of these measures and tools among the platform users.

(4) Amendments to the protection measures adopted pursuant to subsections 1) to 3) shall be submitted to the Council no later than 15 days before the date on which they are to be implemented. The Council shall assess the appropriateness of the protection measures and, if necessary, modify them and, if necessary, communicate its recommendations to the video-sharing platform service provider. If the Council finds out that the protection measures are seriously deficient, it shall proceed in accordance with Section 10.

(5) The rights of the platform user and the video-sharing platform service provider to resolve mutual disputes concerning the scope of the protection measures taken by the video-sharing platform service provider by bringing an action pursuant to another legal provision¹¹⁾ shall remain unaffected by the provisions of subsection 3(i).

Section 9

Personal Data Protection

Personal data of minors collected or otherwise obtained by the video-sharing platform provider pursuant to Section 8(3)(f) and (h) shall not be processed for commercial purposes, in particular, for direct marketing, profiling and behavioural advertising.

Section 10

Corrective Measures

(1) Where the Council finds that the video-sharing platform service provider has not taken the measures to protect itself under Section 8(1) to (3), or that the protection measures

taken by it do not meet the requirements under Section 7 and Section 8(1) to (3), it shall invite it to remedy the situation and shall set a time limit appropriate to the nature of the discrepancies found. The corrective measures adopted shall be notified by the video-sharing platform service provider to the Council within a specified period of time.

(2) If the Council receives notification from the video-sharing platform service provider within the prescribed time limit that sufficient remedial measures have been taken, it shall not initiate proceedings for an offence.

Section 11

Offences

(1) A person commits an offence by

- a) providing a video-sharing platform service without making a notification under § Section 6(2),
- b) resuming the provision of a video-sharing platform service that has been terminated pursuant to Section 6(5), without notifying the Council pursuant to Section 6(6),
- c) failing to comply with the notification obligation under Section 6(7),
- d) contrary to Section 8(4) failing to submit to the Council, within a specified period, amendments to the protection measures,
- e) contrary to Section 9 processing personal data of minors collected or otherwise obtained in the course of the provision of a video-sharing platform service for commercial purposes; or
- f) contrary to Section 14 providing a video-sharing platform service without delivering to the Council, within 90 days as of the effective date of this Act, a notification under Section 6(2) accompanied by the protection measures pursuant to §Section 8(4).

(2) The video-sharing platform service provider commits an offence by

- a) placing an audiovisual commercial communication on a platform operated by the Provider which does not comply with any of the requirements set out in Section 7(2) to (6),
- b) contrary to Section 7(7) failing to take appropriate measures to apply protection to audiovisual commercial communications which it does not itself market, sell or contracts; or
- c) contrary to Section 7(8) failing to inform the other users clearly and without delay of the fact that a video recording uploaded to the platform by another user contains an audiovisual commercial communication, should it get the knowledge of that fact from the user who uploaded the video recording to the platform or otherwise.

(3) The video-sharing platform service provider commits an offence by failing to put

in place appropriate protection measures in accordance with Section 8(1) to (3).

(4) The offence is punishable by a penalty in the maximum amount of

- a) CZK 100,000 in the case of offence as per subsection 1 or subsection 2(b) or (c),
- b) CZK 200,000 in the case of offence as per subsection 2(a), or
- c) CZK 500,000 in the case of offence as per subsection 3.

Section 12

(1) Offences under this Act shall be dealt with by

- a) the Council in the case of offences as per Section 11(1)(a) to (d) and (f) and as per Section 11(2) and (3), and
- b) the Office for Personal Data Protection in the case offence as per Section 11(1)(e).

(2) The penalties imposed for offences as per Section 11 (1)(a) to (d) and (f) and as per Section 11(2) and (3) shall be collected by the Council.

(3) The penalties imposed for offences as per Section 11(1)(e) shall be collected by the Office for Personal Data Protection.

Section 13

Common Provisions

Unless otherwise provided for in this Act, the rights and obligations of the video-sharing platform service provider under the Act on Certain Information Society Services shall remain unaffected. In the event of a conflict between this Act and the Act on Certain Information Society Services, this Act shall prevail.

Section 14

Transitional Provisions

A person who, as of the effective date of this Act, provides a service that is deemed to be a video-sharing platform service as of the effective date of this Act shall, within 90 days as of the effective date of this Act, deliver to the Council a notification of the details under Section 6(2) containing the protection measures pursuant to Section 8(4).