



Ensuring a competitive market through regulation: Focus on the AVMS Directive

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European Audiovisual Observatory
Europäische Audiovisuelle Informationsstelle



The Audiovisual Media Services Directive (AVMSD)

The regulatory frameworks of the audiovisual sector in the EU

- Before 2018 -

AVMS Directive of 2010/13/EU

E-Commerce Directive



TV broadcasting

Audiovisual media services



VoD services



Video-sharing platforms

The regulatory frameworks of the audiovisual sector in the EU

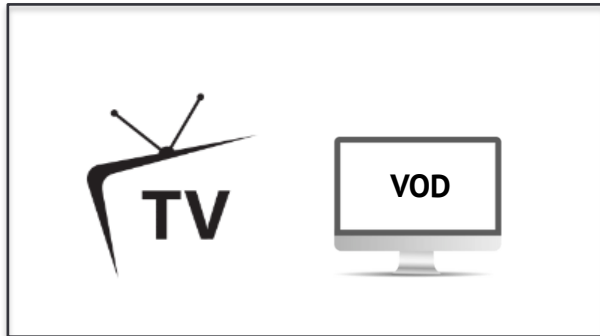
- 2018 update -

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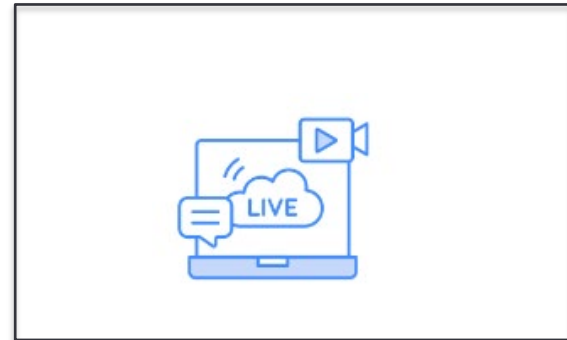
AVMS Directive (EU) 2018/1808

Need to match market realities

Audiovisual media services

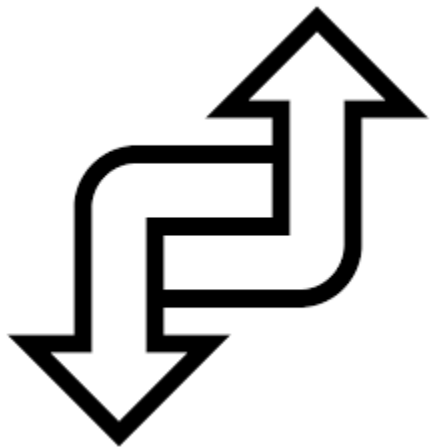


Video-sharing platforms



AVMSD 2018

Towards a more level
playing field



KEY CHANGES

- Establishment criteria / jurisdiction + freedom of reception and retransmission
- Promotion of European works for VOD services
- Audiovisual commercial communications
- Video-sharing platforms
- Protection of minors
- Independence of National Regulatory Authorities (NRAs)

Relevant EAO online services and publications



AVMSDatabase

Database on the transposition of the AVMS Directive into national legislation.



<https://avmsd.obs.int>

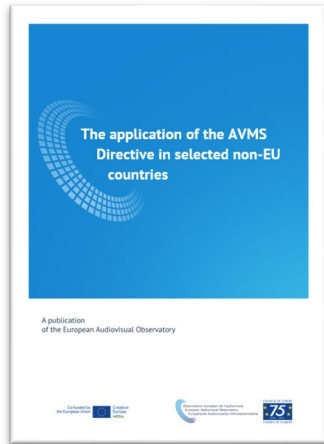


AVMSDigest

- The promotion of European works (2023)
- The protection of minors on VSPs (Fall 2024)



<https://rm.coe.int/avmsdigest-the-promotion-of-european-works>



MAPPING ON THE APPLICATION OF THE AVMSD IN SELECTED NON-EU COUNTRIES

Study on **legal developments in the media field** in a range of non-EU countries conducted by the EAO in **2022 and 2023** and published in April 2024.



<https://www.obs.coe.int/en/web/observatoire/mapping-reports>



PROJECT SCOPE

11 countries covered:

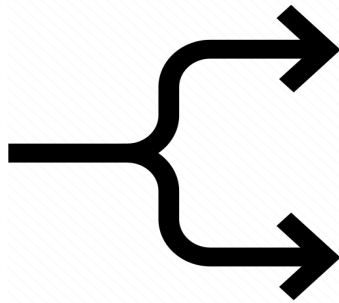
Albania, Armenia, Bosnia and Herzegovina, **Georgia**, Moldova, Montenegro, North Macedonia, Serbia, Tunisia, Ukraine, Kosovo

LEGAL PROVISIONS AND LEVEL PLAYING FIELD

Examples of AVMSD relevant provisions

KEY FINDINGS

In selected non-EU countries



MOSTLY IN LINE WITH AVMSD 2010

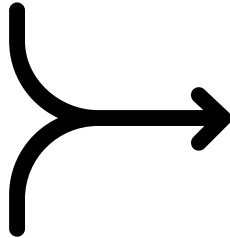
- The majority of the 11 countries covered broadly contained or reflected the provisions of the AVMSD 2010

PUSH TOWARDS LEGAL REFORMS IN LINE WITH AVMSD 2018

- Updating and additions of **definitions** (e.g. VSPs, user-generated content)
- Level-playing field for linear/on-demand AVMS re. **European works**
- Relaxation of rules on **audiovisual commercial communications**
- Expansion of rules to **include VSPs**
- Additional provisions regarding the **independence of the NRA**

KEY FINDINGS

General principles



RELEVANT GENERAL PRINCIPLES

- Principle of **non-discrimination** addressed in a range of legislation (Constitution, Criminal law, Audiovisual law, specific laws)
- Prohibition of **incitement to hatred** provided in a range of legislations (Constitution, Criminal law, Audiovisual law)
- **Prohibition of illegal content** largely addressed in Criminal codes, except where new amendments to Audiovisual law, in line with AVMSD

FOCUS ON GEORGIA:

Legal framework on general principles



General principles: non-discrimination, prohibition of incitement to hatred, incitement to violence

Principles and prohibitions	Constitution	Mass media / information laws	Audiovisual laws	Non-discrimination / equality laws	Criminal code	Other codes and guidance
Principle of non-discrimination	AL, AM, BA, GE , MD, ME, MK, RS, TN, UA, XK,	AL, RS	AL, AM, BA, GE , MD, ME, MK, RS, TN, UA; XK (draft)	AL, MD, TN, UA	AM, GE , ME, MK, UA	BA, GE, XK
Prohibition of incitement to hatred and incitement to violence	AM, GE , MD, ME, MK, RS, XK	AL, ME, RS, TN, UA,	AL, BA, GE , MD, ME, MK, UA; RS, XK (draft law)		AL, AM, BA, GE , ME, MK, RS, UA, XK	BA, GE , MD, ME, MK, XK, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

FOCUS ON GEORGIA:

Legal framework on illegal content



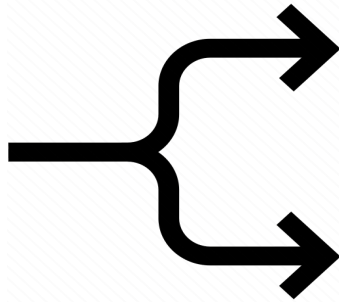
General principles: Prohibiting illegal content

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Prohibitions	Constitution	Mass media / information laws	Audiovisual laws	Criminal code	Other codes/ guidance
Prohibition of provocation to commit a terrorist offence			AL, BA, GE , MK, UA (adopted laws and codes); ME, RS, XK (draft laws)	AL, AM, BA, GE , MD, ME, MK, RS, UA	BA, MD
Prohibition of child pornography			AL, BA, GE , MK, UA, (adopted laws and codes); ME, RS, XK (draft laws)	AL, AM, GE , MD, ME, MK, RS, UA, XK	MD, TN
Prohibition of content promoting racism and xenophobia	AM, BA, GE , MD, ME, MK, RS, XK	RS, TN	AL, BA, GE , MK, UA, (adopted laws and codes); ME, XK (draft laws)	AL, AM, BA, GE , MD, ME, MK, UA	BA, MD, ME, TN
General prohibition of content inciting any acts prohibited by law			AM, MK, RS		XK

KEY FINDINGS

Legislative approaches



COLLABORATIVE APPROACHES

- A common approach in many of the countries covered is to **engage stakeholders extensively** in the development of draft laws

NEW AREAS COVERED

- All laws and draft laws address the issue of **Video Sharing Platforms (VSPs)** and secondary legislation is likely to be developed in this area
- **National Regulatory Authorities (NRAs)** frequently play a significant role in most countries in the development of legislative proposals.

FOCUS ON GEORGIA:

Legal framework on European works on *linear services*



Promotion of European works on linear services

AVMSD and the promotion of European works (linear services) (Articles 16 and 17)	In line with 2010 and 2018 AVMSD	Draft law changes in line with 2010 and 2018 AVMSD	Partially in line	Not mentioned
The use of majority quota obligations (for example more than 50% of content) to promote European works	AL, BA, MD, ME, MK, RS, UA	XK (partly as quota is 30%)	GE, (general requirement to promote – provision to be updated)	AM, TN
Exceptions to this rule	AL, BA, GE, MD, ME, MK, RS, UA	XK,		AM, TN
Rules where a minimum percentage of content (for example 10%) should be European works created by producers who are independent of broadcasters	AL, BA, GE, MD, ME, MK, RS, UA	XK,		AM, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

Promotion of European works on on-demand services

FOCUS ON GEORGIA:

Legal framework on European works on *on-demand* services



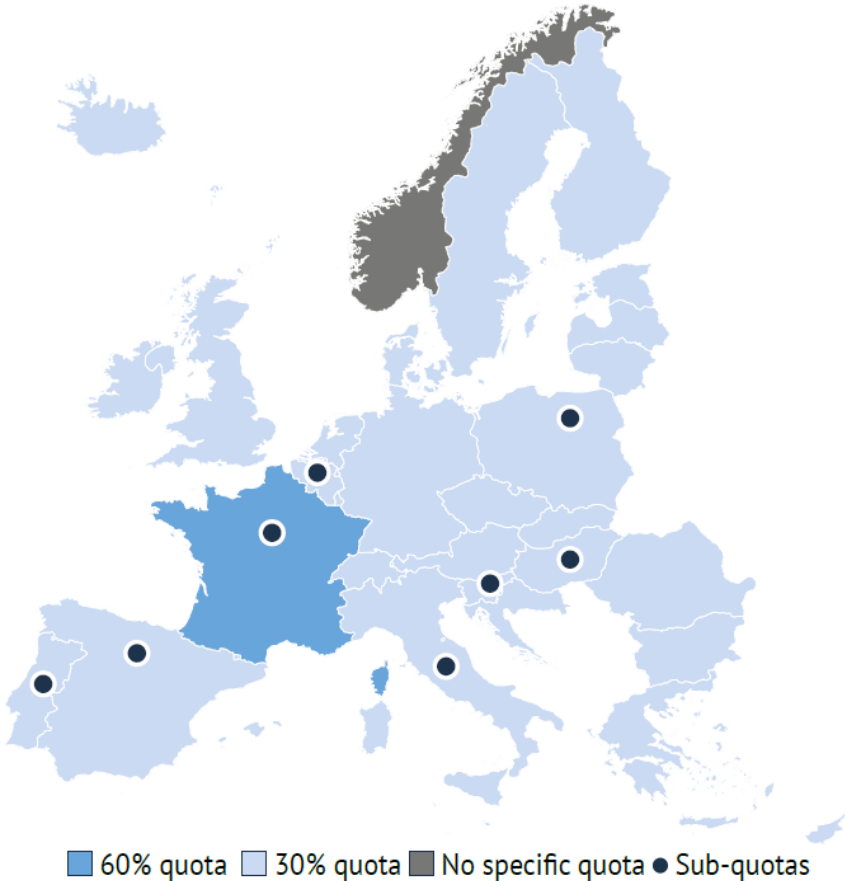
AVMSD and the promotion of European works (on-demand) (Article 13)	In line with AVMSD 2010	Draft law changes in line with 2010 AVMSD	In line with 2018 AVMSD	Draft law in line with 2018 AVMSD	Partly in line	Not mentioned
Requirement that media service providers of on-demand AVMS secure at least a 30 % share of European works in their catalogues and ensure prominence of those works	ME, MK, RS (general obligation to promote European works)		AL, BA, GE , MK, MD, UA	ME, RS, XK		AM, TN,
Exemptions for media service providers with a low turnover or a low audience			BA, MK, GE ,	ME, RS		AL, AM, MD, TN, UA, XK
Reference to European Commission guidelines on a) calculation of the share of European works, and b) definitions of low audience and low turnover of services			BA, GE , ME, MK, (to be addressed in by-laws / rules)			AL, AM, MD, RS, TN, UA, XK
Financial contribution obligations for services targeting the country				XK		AL, AM, BA, GE , MD, ME, MK, RS, TN, UA,

Source: Response of national experts to European Audiovisual Observatory standardised survey

State of implementation of the AVMSD 2018/1808

Article 13(1)

VOD



FOCUS

FR Of the total number of feature films on the one hand and audiovisual works on the other made available to the public, a share of at least 60% shall be reserved for European works.



BE(FR) The proportion must increase gradually and each year from the entry into force of the decree (2021) to reach 40% at the end of a transitional period of five years.

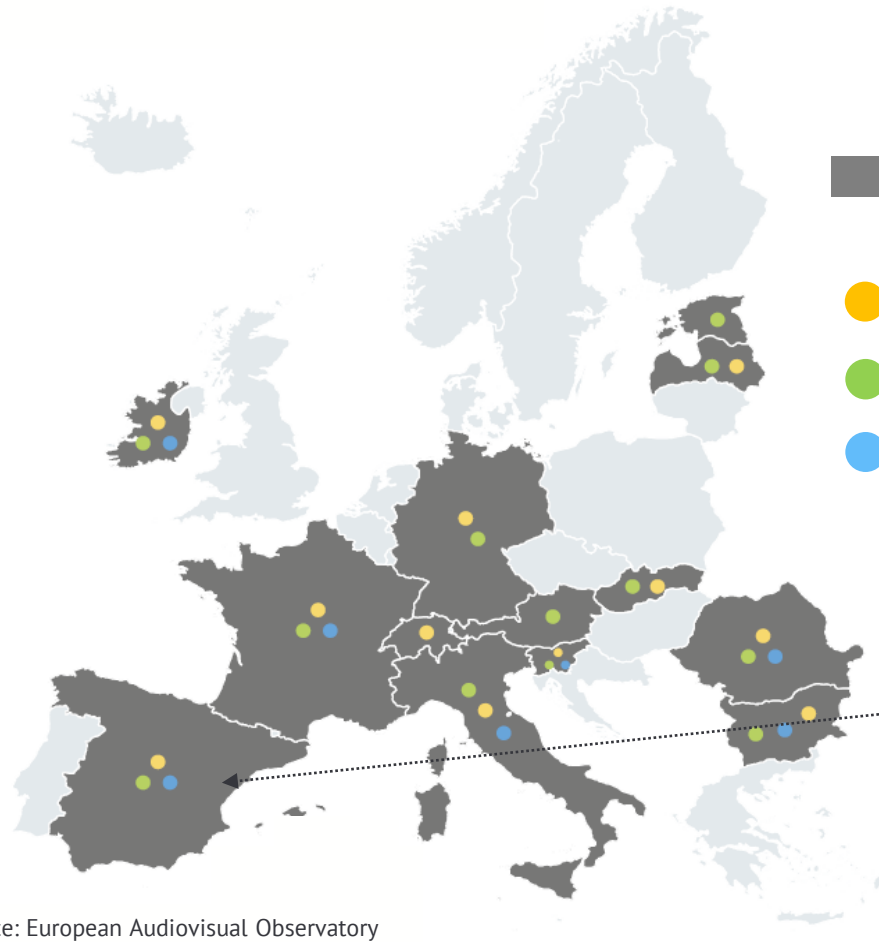


Source: European Audiovisual Observatory – (EU/EEA/EFTA/UK)

State of implementation of the AVMSD 2018/1808

Article 13(1)

VOD



- Countries implementing specific prominence tools
- Search tool
- Attractive presentation
- Campaigns



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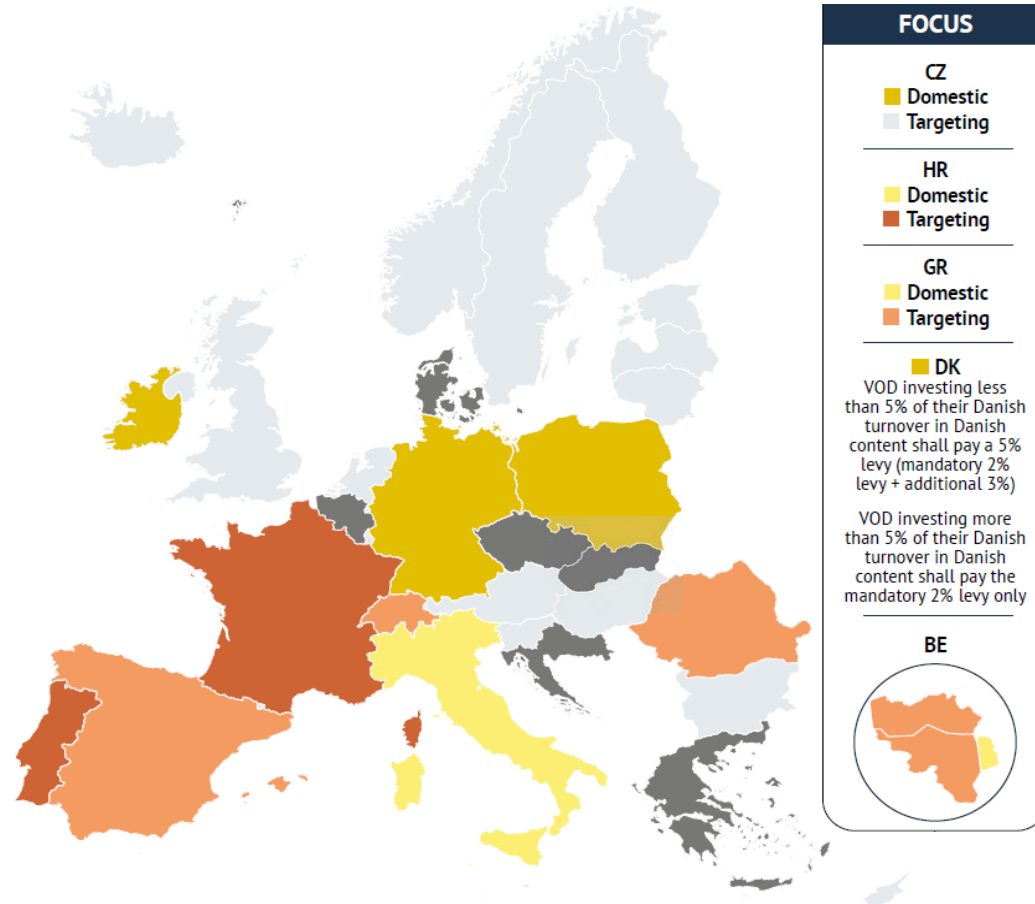
Audiovisual content produced, dubbed or subtitled in the official languages of the Autonomous Communities must be promoted.

State of implementation of the AVMSD 2018/1808

Article 13(2)

VOD

VOLUNTARY



- Direct only
- Levies only
- Alternative
- Cumulative
- No obligation
- See focus box

FOCUS ON GEORGIA:

Legal framework on audiovisual commercial communications



Audiovisual commercial communications (ACCs)

AVMSD and ACCs (Articles 9,10,11 and 23)	In line with AVMSD 2010	Draft law changes in line with 2010 AVMSD	In line with 2018 AVMSD	Draft law in line with 2018	Not mentioned
ACC should be recognisable; Prohibition surreptitious ACC and subliminal techniques	AL, BA, MD, ME, MK, RS, TN, UA, XK		AL, BA, GE , MD, ME, MK, RS, TN, UA, XK		
ACC shall not prejudice respect for human dignity, promote discrimination, behaviour prejudicial to health or safety, environment..	AL, BA, MD, ME, MK; RS, UA, XK, TN (closely)		AL, BA, MD, ME, MK, RS, UA, XK, GE , TN (closely)		
ACC for the prescription of medicinal products/treatment shall be prohibited	AL, BA, MD, ME, MK, RS, UA, XK		AL, BA, MD, ME, MK, RS, UA, XK, GE , (closely)		TN
Rules on sponsorship – prohibitions for types of programmes /goods and services	AL, BA, MD ME, MK, RS, XK		AL, BA, GE , MD ME, MK, RS, UA, XK	TN	
No product placement (PP) in news, current affairs, consumer affairs, religious, children's programmes	BA, MD, ME, MK, XK RS, GE , TN (closely)		AL, BA, GE , MD, ME, MK, UA, XK, RS, TN (closely)	XK	
PP should not: affect the responsibility and editorial independence of AVMS provider; directly encourage purchase or rental of the product; give undue prominence to the product	AL, BA, GE , MD ME, MK, RS, TN, XK		AL, BA, GE , MD ME, MK, RS, TN, UA, XK		
Viewers shall be clearly informed of the existence of PP in a programme	BA, GE , MD, ME, MK, RS, TN, XK		AL BA, GE , MD, ME, MK, RS, TN, UA, XK		
Limiting the proportion of TV advertising spots / teleshopping throughout the day, or during particular time periods	MD, ME, RS, TN, UA (closely in line)		AL, BA, GE , MK, UA,	ME, XK	
Are there exceptions to these rules, for example for self-promotion, sponsorship, product placement?	AL, BA, GE , MD, MK, RS, UA		AL, BA, GE , MD, MK, RS, UA	ME, XK	TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

Obligations on video-sharing platforms regarding content (VSPs)

FOCUS ON GEORGIA:

Legal framework on VSPs / content



AVMSD and provisions relating to VSPs 28b	In line with 2018 AVMSD	In line with 2018 AVMSD in the draft laws	Not yet in line
Protecting minors from harmful content in programmes UGCs and ACCs; protecting the general public from programmes, UGC videos and ACCs containing incitement to violence or hatred, and from criminal content	AL, BA, MK, MD, UA, GE (Partly)	ME, RS, XK	AM, TN
VSP providers need to comply with the obligations (Article 9(1)) regarding the ACC they control (market, sell or arrange), and those controlled and uploaded by others	BA, GE, MK, AL, UA (closely aligned)	ME, RS, XK,	MD, AM, TN,
VSPs should clearly inform users where programmes and UGC videos contain ACC	BA, MK, UA AL, GE (closely in line) GE (partly in line)	ME, RS, XK	MD, AM, TN
VSP should reduce the exposure of children to ACCs for foods and beverages containing fat, trans-fatty acids, salt or sodium and sugars (HFSS)	AL, BA, MK, UA	ME, XK	GE, MD, AM, RS, TN

Source: Response of national experts to European Audiovisual Observatory standardised survey

FOCUS – How do VSPs protect minors from unhealthy food in EU Member States?



Art. 28b (2)

VSPs shall comply with the requirements with respect to commercial communications that are marketed, sold or arranged by those VSPs + inform users where programmes and user-generated video contain commercial communication
+ Member States shall encourage the use of co- and self-regulation through codes of conduct on 'unhealthy' foods

- Few countries **restrict** unhealthy ACC **during children's programmes**
- **General provision** in the majority of EU MS
- Reference to the need to develop and use **self-regulation**
- Reference to **codes of conduct**, **'behavioural' codes**, **codes of 'best practices'**, **codes of 'ethics'**, for VSPs
- Reference to **self-regulation bodies** in some MS
- Reference to NRAs in some MS, calling on NRAs to encourage VSPs to introduce codes

Obligations on video-sharing platforms – measures and supervision

FOCUS ON GEORGIA:

Legal framework on VSPs / measures and supervision



AVMSD and provisions on VSPs (Article 28b)	In line with 2018 AVMSD	In line in draft laws	Not mentioned / not yet in line
Measures introduced by national rules?			
Adapting terms and conditions for users of VSPs to include obligations relevant to content and/or ACCs;	BA, GE , MK, UA, MD (partly)	ME, XK	AL, AM, RS, TN
Possibility to declare the presence of ACCs in UGC video	BA, GE , MK, UA	ME, XK	AL, MD, AM, RS, TN
Reporting or flagging systems to report harmful content to the VSP provider	BA, GE , MK, UA, MD partly)	ME, XK	AL, AM, RS, TN
Age verification systems for users	BA, GE , MK, UA, MD	ME, XK	AL, AM, RS, TN
Content-rating systems for users	BA, MK	ME, XK	AL, GE , MD, AM, RS, TN, UA
Parental control systems	BA, GE , MK, UA, MD	ME, XK	AL, AM, RS, TN
Procedures for complaints to the VSP	BA, GE, MK, UA, MD (partly)	ME, XK	AL, AM, RS, TN
Providing media literacy measures and tools	BA, GE, MK	ME, XK	AL, MD, AM, RS, TN, UA
Implementation and supervision	In line with 2018 AVMSD	In line in draft laws	Not mentioned / not yet in line
Protection of the personal data of minors	BA, GE, MK, UA,	ME, XK	AL, MD, AM, RS, TN
NRA tasked with assessing the appropriateness of the measures taken by VSPs	BA, MK, MD, GE , UA (partly)	XK, ME	AL, AM, RS, TN
Out-of-court redress mechanisms for disputes btw. users and VSPs	BA, MK, MD, UA (partly)	ME, XK	AL, AM, GE, RS, TN
Encourage best practice btw VSPs on co-regulatory codes	BA, MK, UA, MD	ME, XK	AL, GE, XK, ME, AM, RS, TN

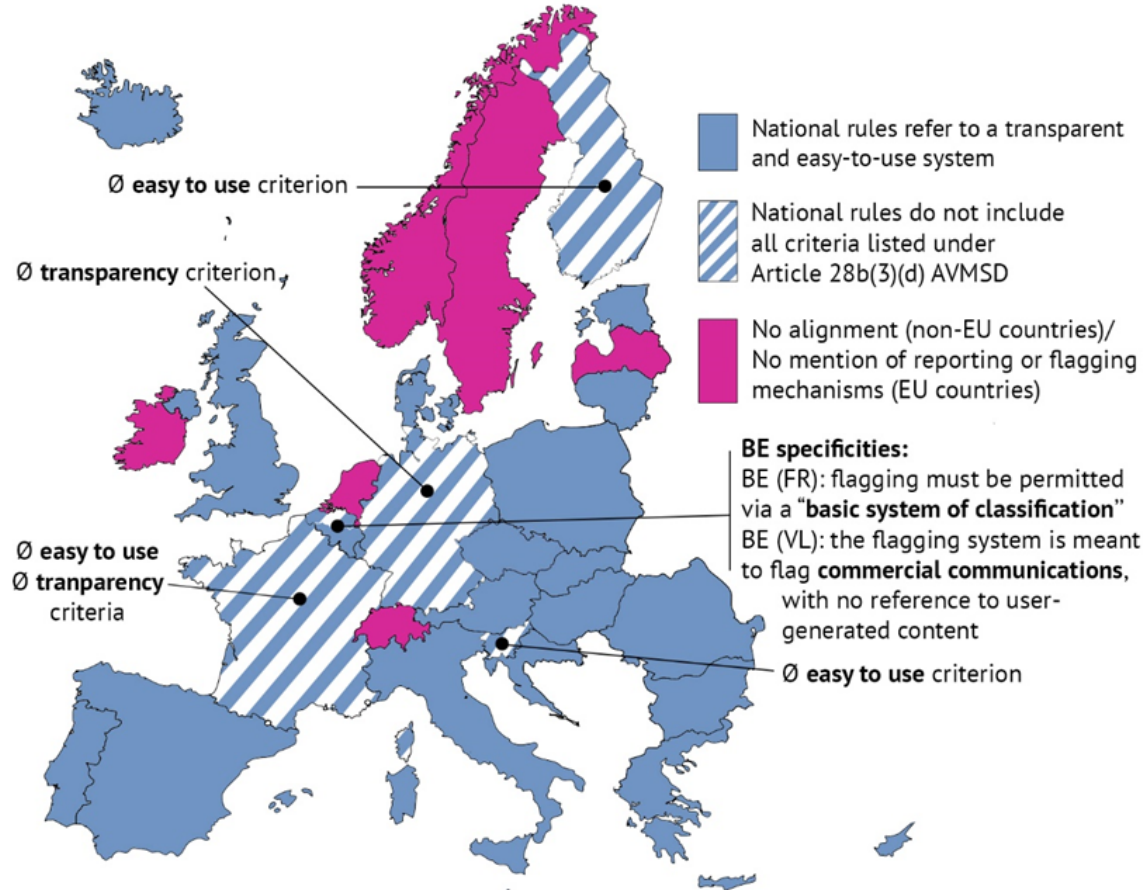
Source: Response of national experts to European Audiovisual Observatory standardised survey

State of implementation of the AVMSD 2018/1808

Article 28b(3)(d)

Video-sharing platforms

Reporting and flagging mechanisms



Source: European Audiovisual Observatory – (EU/EEA/EFTA/UK)

Article 28b(3):

[...]

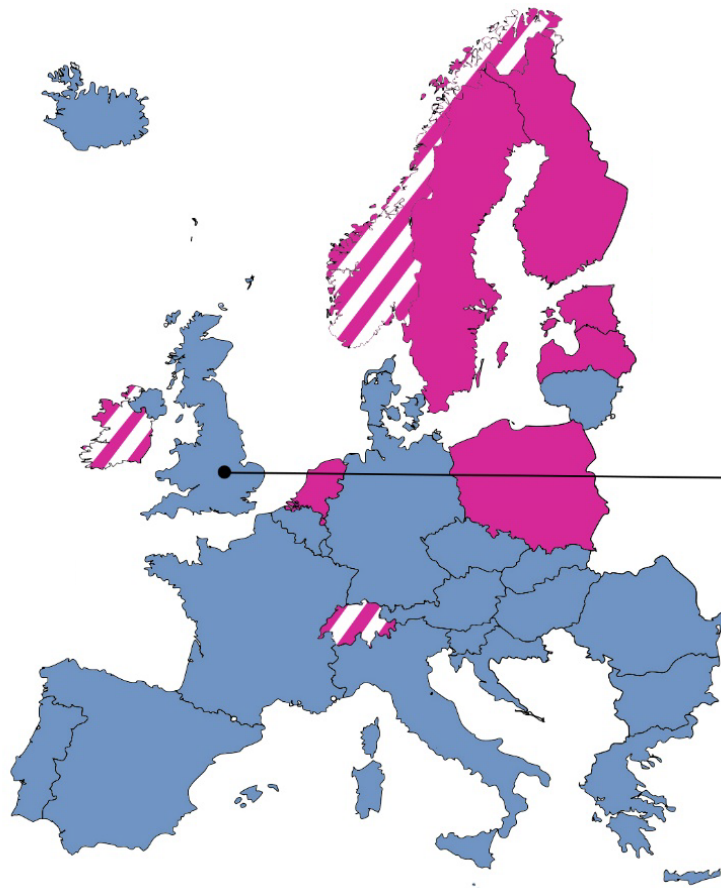
(d) establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 provided on its platform;

State of implementation of the AVMSD 2018/1808

Article 28b(3)(f)




Video-sharing platforms

Age verification measures



Specificity in the UK legislation:

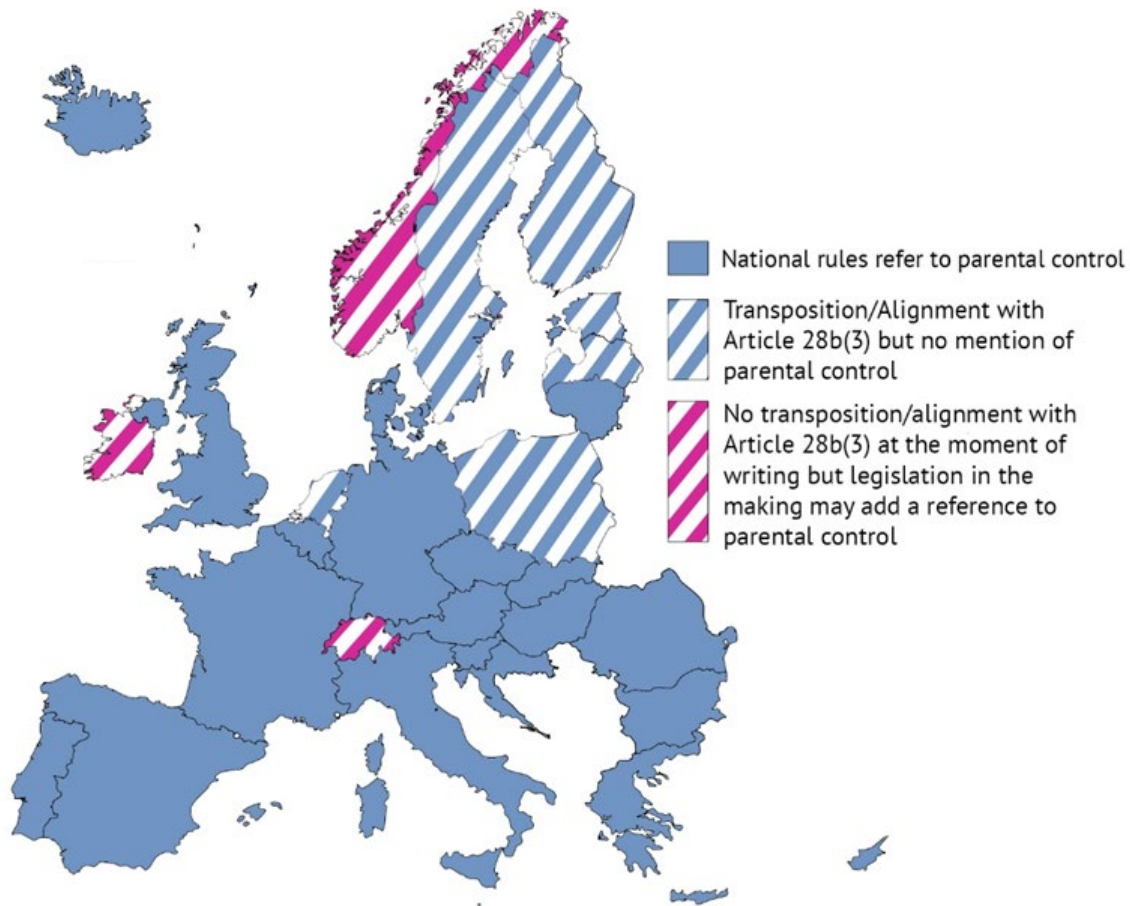
Age estimation is mentioned in the law as another tool for the protection of minors

-  National rules refer to age verification
-  No mention of age verification
-  Legislation in the making may add a reference to age verification
based on the EAO's research and publicly available data

Article 28b(3):

[...]

(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;



Source: European Audiovisual Observatory – (EU/EEA/EFTA/UK)

Article 28b(3):
[...]
(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;

Thank you for you attention!

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