



Upcoming AVMSD review: “It’s all a question of definition!”

EAO Austrian Presidency Conference
4 June 2025
Parkhotel Schönbrunn, Vienna

 **Federal Ministry**
Housing, Arts, Culture,
Media and Sport
Republic of Austria



Welcome and introduction

Andreas Ulrich

Federal Ministry for
Housing, Arts, Culture, Media and Sport

Maja Cappello

Head of Department for Legal Information
European Audiovisual Observatory

Introducing the first panel

Definition(s) of AVMS providers

Michael Holoubek

Member of the Austrian Constitutional Court, Professor at the Vienna University of Economics and Business (Austria)

Persa E. Lampropoulou

Legal advisor to the National Council for Radio and Television (Greece)

Moderator**Matthias Traimer**

Head of Department, Media Affairs,
Federal Ministry for Housing, Arts,
Culture, Media and Sport

Raffaele Di Giovanni-Bezzi

European Commission

Inge Welbergen

Legal officer media, Ministry of Education, Culture and Science (the Netherlands)



AVMS providers in the legislative puzzle of AVMSD, DSA and EMFA

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A question of definition

- Legal definitions of the concept of “audiovisual media service provider”
- AVMSD, EMFA and DSA taken into account
- Concrete impact?

AVMSD, EMFA and DSA

- **“Audiovisual media service providers” and “video-sharing platforms” (AVMSD 2018)**
- **“Providers of very large online platforms” (DSA 2022)**
- **“Media service providers” (EMFA 2024), including:**
 - providers of linear TV,
 - providers of video-sharing platforms and
 - very large online platforms

(Audiovisual) media service providers

- **Editorial responsibility** for the choice of the content
- **Organisation** of the content

(Audiovisual) media service providers

AVMSD

- Providers of television broadcasts
- Providers of an on-demand audiovisual media service

EMFA

- (Public or private) media service providers
 - Linear TV
 - Linear radio
 - On-demand TV services
 - Audio podcasts
 - Press publications
- Exceptionally: Users for their user generated content (UGC),
if it constitutes a professional activity normally provided for consideration, be it of a financial or other nature

**VSPs: no editorial responsibility
but editorial control**

AVMSD

Recitals 3 and 47 Dir. 2018/1808

... audiovisual services under the editorial responsibility of a provider can constitute audiovisual media services in themselves, even if they are offered on a **video-sharing platform** which is characterised by the **absence of editorial responsibility**. ...

A significant share of the content provided on video-sharing platform services is **not under the editorial responsibility of the video-sharing platform provider**. ...

EMFA

Recital 11 Reg. 2024/1083

...**video-sharing platform providers** or providers of very large online platforms could fall under the definition of media service provider ..., but **do not exercise editorial responsibility** over the content to which they provide access.

...some video-sharing platform providers or providers of very large online platforms have started to **exercise editorial control over a section or sections of their services**. Therefore... they could be qualified as both a video-sharing platform provider or a provider of a very large online platform and a media service provider.

VLOPs: possibility of cumulative obligations

Article 2(10) EMFA:

‘provider of a very large online platform’ means a provider of an online platform that has been designated as a very large online platform pursuant to Article 33(4) of Regulation (EU) 2022/2065 [DSA];

Recital 11 EMFA

Providers of very large online platforms who exercise editorial control over a section or sections of their services could be qualified as both a provider of a very large online platform **and** a media service provider

Recital 51 EMFA (about **protection of minors**)

[...] In that context, nothing in this Regulation should be construed as deviating from the obligations of providers of very large online platforms pursuant to Articles 28, 34 and 35 of Regulation (EU) 2022/2065 [DSA] and Article 28b of Directive 2010/13/EU [AVMSD];

EMFA

DSA

AVMSD

UGC: possibility of cumulative obligations

AVMSD

Recital 5 AVMSD

While the aim of Directive 2010/13/EU is not to regulate social media services as such, a social media service should be covered if the provision of programmes and **user-generated videos** constitutes an essential functionality of that service. [...]

EMFA

Recital 9 EMFA

The definition of media service should [...] exclude **user-generated content** uploaded to an online platform unless it constitutes a professional activity normally provided for consideration, be it of a financial or other nature.

DSA

Recital 68 DSA

[...] Finally, this Regulation complements the application of the Directive 2010/13/EU which imposes measures to enable users to declare audiovisual commercial communications in **user-generated videos**.

Key takeaways

- Multiplicity of seemingly similar concepts.
- Sometimes same concepts as in other instruments (with reference to these), other times different concepts.
- Key criterion of editorial responsibility remains, but ‘editorial control’ is also taken into account
- Concrete impact: transparency of the obligations of video-sharing platform providers and providers of very large online platforms



Practical challenges in the MAVISE update

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Gilles Fontaine

Head of Department for Market Information
European Audiovisual Observatory





Some **practical challenges** detected through the **MAVISE** updates...

- ❑ **Hybrid AV services**
 - Same programs available both on-demand and in linear.
 - Is the distinction linear vs. on-demand still valid?
- ❑ **Proliferation of services on the Internet**
 - ~2 000 FAST channels vs. ~ 270 in MAVISE.
 - Would including FAST platforms in “traditional” distributors’ registries help track them?
- ❑ **Niche, short lifespan, OTT TV channels**
 - Editors permanently rearranging channels with a short life span.
 - Is monitoring each individual niche channel feasible?

Thank you!

Questions to

maja.cappello@coe.int

gilles.fontaine@coe.int

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Introducing the second panel

**(How) should advertising regulation
evolve in the age of influencers?**

Corinna Drumm

Managing Director, Association of Austrian
Private Broadcasters (VÖP)

Peter Eftimov

Influencer (Lingualizer on YouTube, TikTok,
Instagram)

Thomas Petz

Member of KommAustria

Michael Straberger

President, Austrian Advertising Council

Moderator**Matthias Traimer**

Head of Department, Media Affairs,
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New competition in the advertising market

EAO Austrian Presidency Conference
Vienna, 4 June 2025

Gilles Fontaine

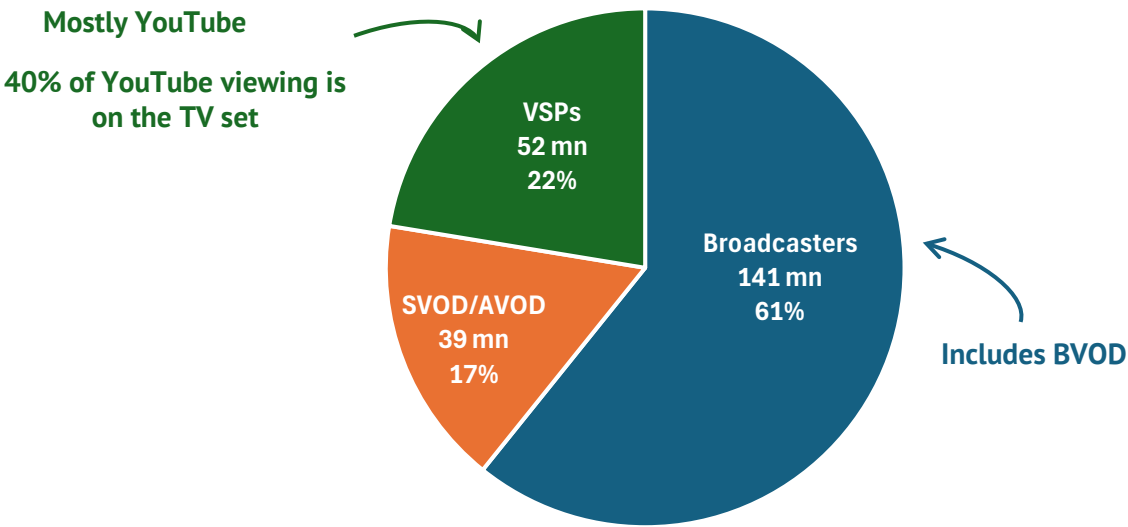
Head of Department for Market Information
European Audiovisual Observatory



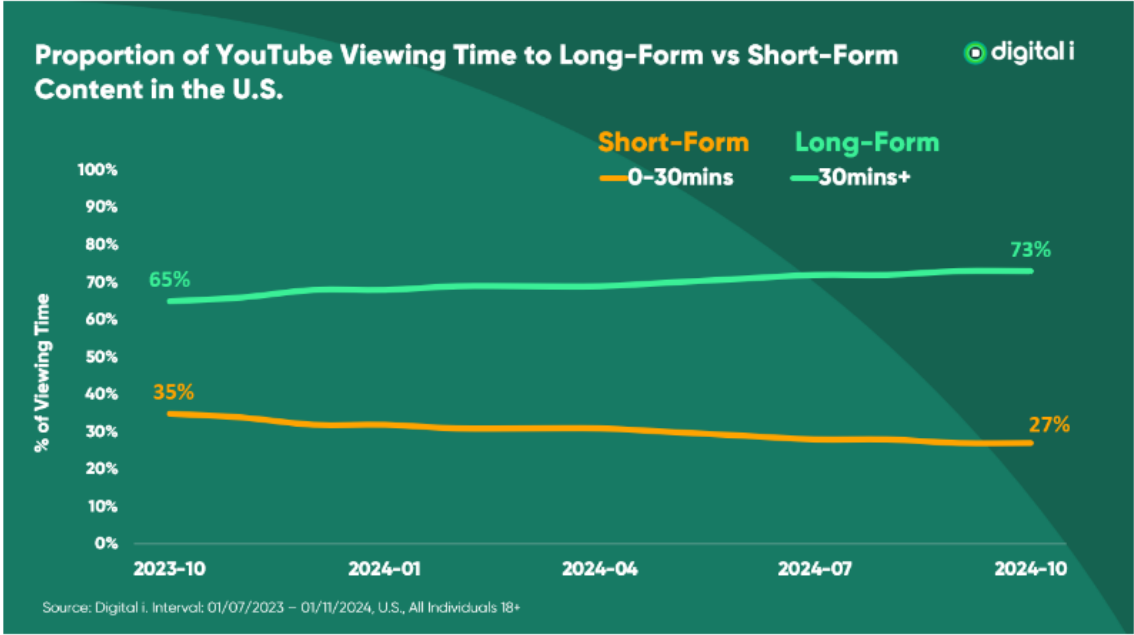
HOW IMPORTANT ARE VSPs IN THE AV MARKET ?

AUDIENCE

BREAKDOWN OF TOTAL VIDEO DAILY VIEWING TIME IN THE UK – AUGUST 2024 – 4 SCREENS – 4+

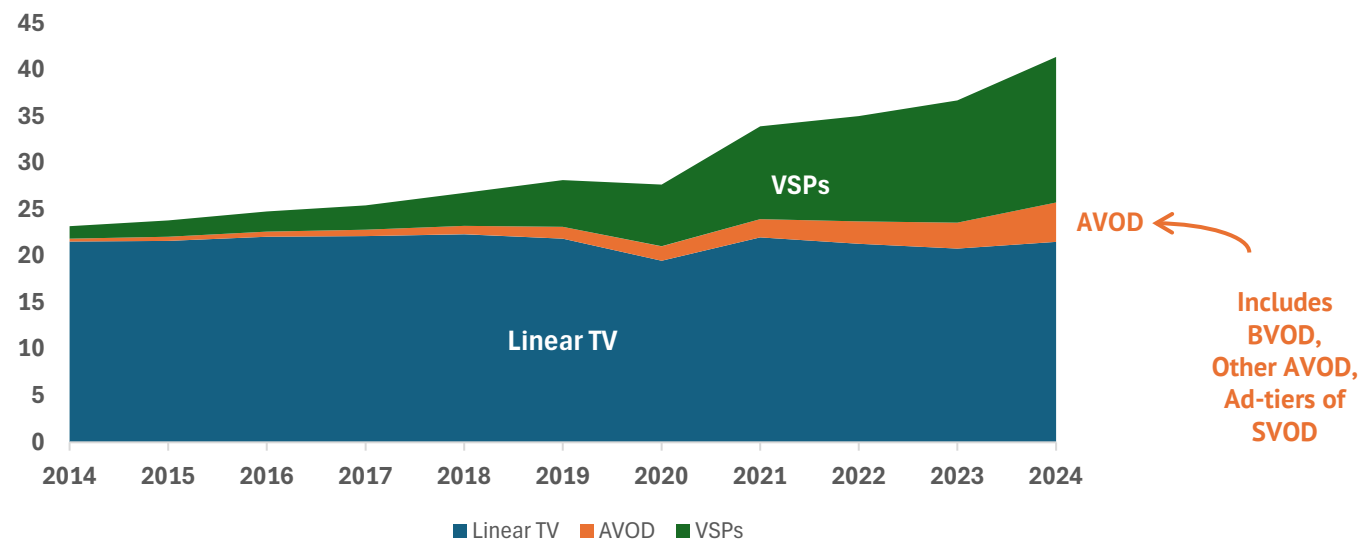


Source: BARB



ADVERTISING MARKET

ADVERTISING ON VIDEO SERVICES IN EUROPE BY
CATEGORY OF SERVICES (ESTIMATES - BN EUR)



Source: WARC, Dataxis



How are influencers defined across Europe?

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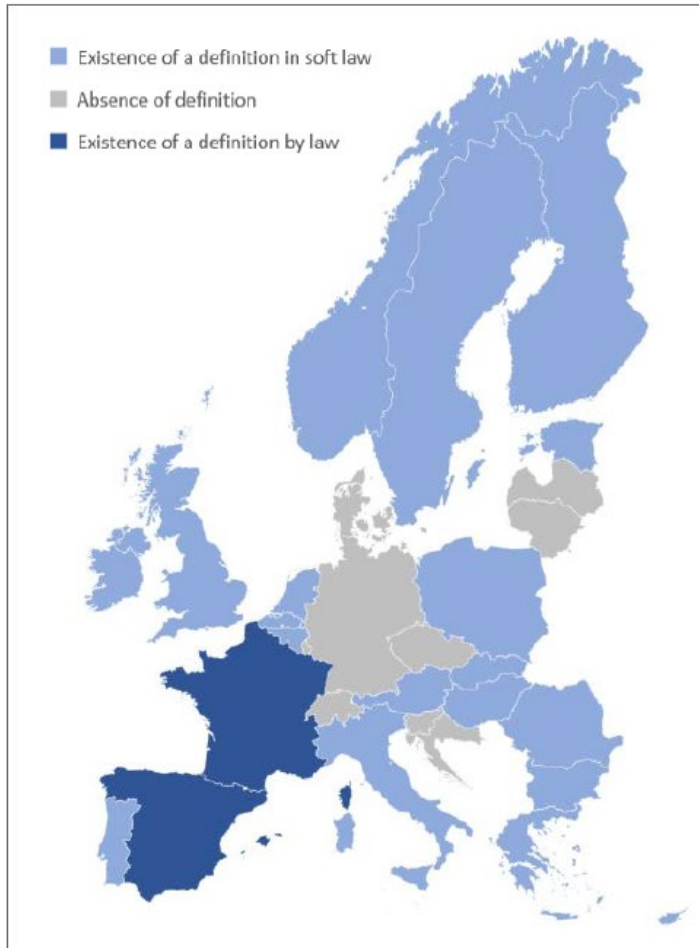
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Influencers

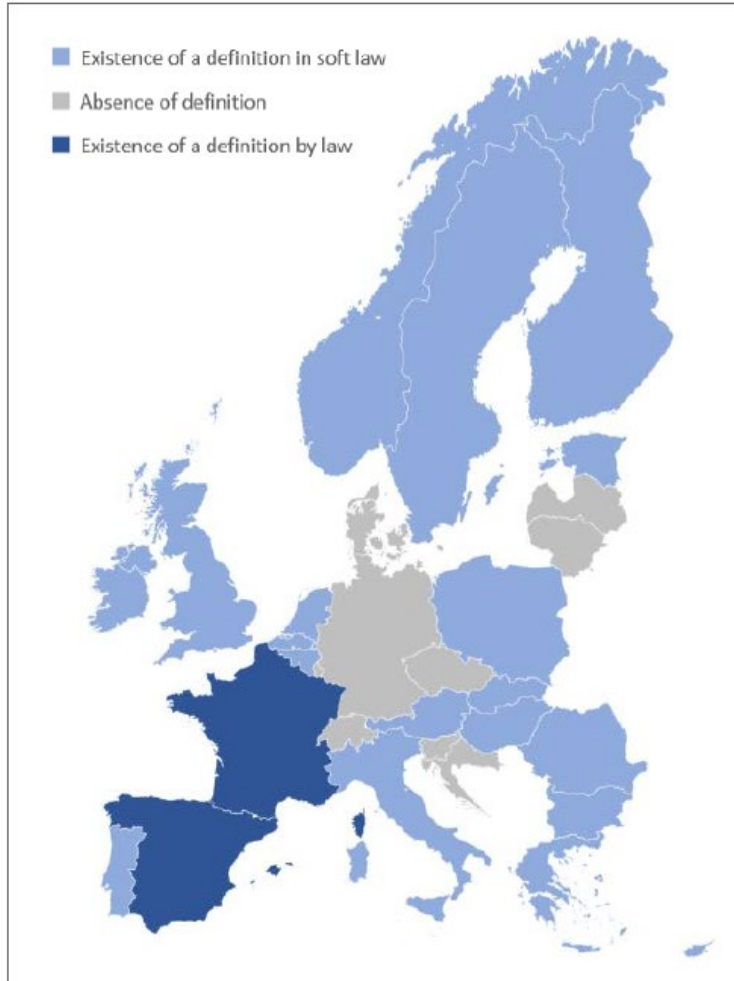
- **Absence of harmonised definition** of influencers at EU level
- Some countries have adopted a legal definition of influencer marketing activities (e.g. France)
- Others rely on self-regulation by the advertising industry
- Some include influencers in the definition of AVMS providers

Existence of a definition of influencers



- 2 countries have a legal definition (FR, ES)
- Others rely on self-regulation by the advertising industry (e.g. BE, EE, HU)
- 10 countries have no legal definition (CH, CZ, DE, DK, HR, LT, LU, LV, MT, SI)

Influencers defined by law



Spain defines **users of special relevance**, a term which includes influencers

(Law No. 12/2022, General of Audiovisual Communication)



France defines **persons carrying out the activity of commercial influence by electronic means**

(Law No. 2023-451 of 9 June 2023 aimed at regulating commercial influence and combating the excesses of influencers on social networks)

What is an influencer: common traits

| | |
|---------------------------------------|--|
| Content creation/dissemination | Via Digital platforms (social media, blogs, etc.) |
| Audience reach/engagement | Often with qualitative or quantitative thresholds |
| Commercial intent/benefit | Promotion for payment, gifts or other advantages |
| Influence/impact | Ability to affect opinions or behaviours |
| Use of digital platforms | Online presence is essential |

Influencers as AVMS providers

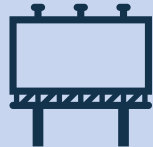


In most EU-27 countries, transpositions of Article 1(1)(a) AVMSD defining **audiovisual media service** can include the activity of **certain influencers**.

Some NRAs must still overcome **technical challenges** prior to being able to effectively regulate the activity of influencers under their jurisdiction.

Additional criteria for influencers to be considered as AVMS providers

Most frequent criteria:



Advertising in content



Frequency in posting content



Size of the follower-base

Criteria are often provided with **no clear thresholds** above which an influencer is considered to be an AVMS providers, potentially leading to **uncertainty among influencers themselves**.

Common traits and differences



Follower-base threshold difference

1 million followers on a single VSP
/ 2 million aggregated followers

500 000 followers



Content-posting frequency threshold

All countries with a threshold for frequency have set it at 24 videos/pieces of content per year.

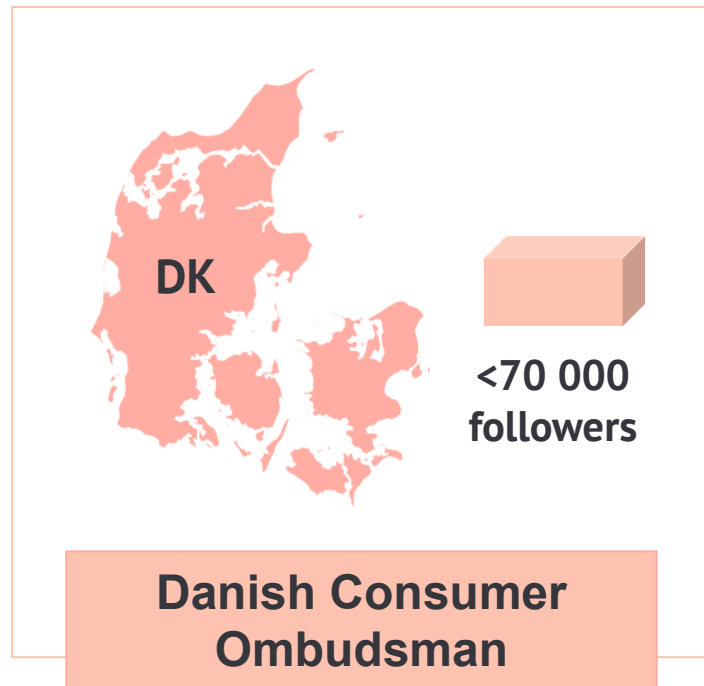
Clear threshold were introduced in **Spain, Italy** and the **Netherlands**.

As of June 2025, the Dutch regulator has reduced the threshold for its follower-base criterion to 100,000.

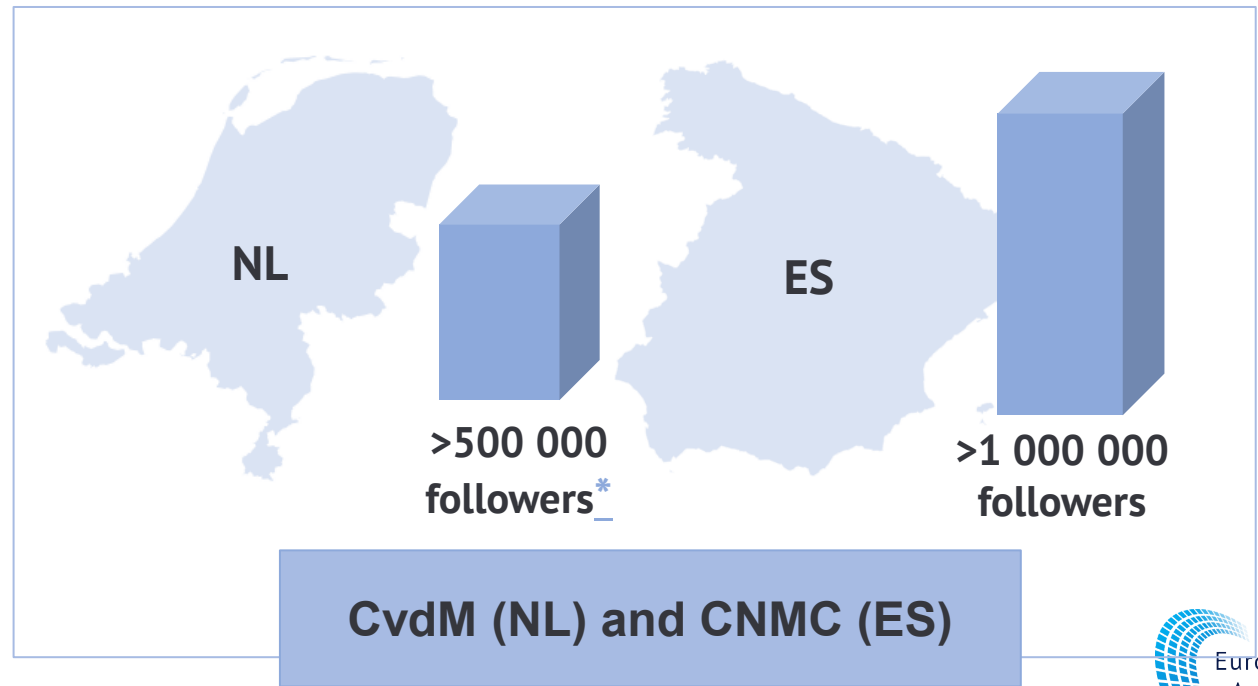
Austria, Czechia, Greece and **Lithuania** have criteria but no strict thresholds.

When are influencers considered too small?

Where no strict thresholds exist, influencers with a much smaller follower-base may be considered as audiovisual media service providers.



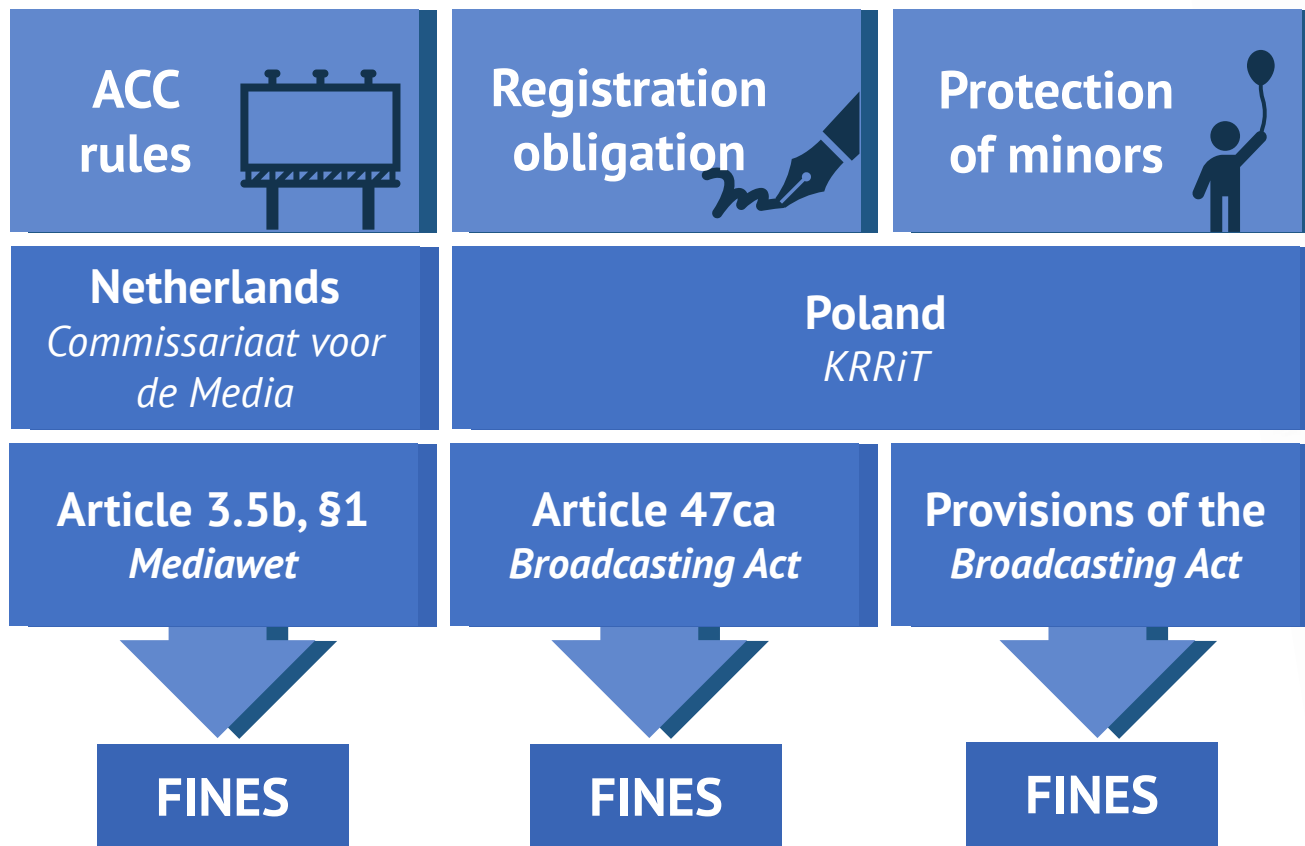
based on consumer law



based on media law

* see previous slide

Examples of enforcement actions against influencers



Existence of guidance documents

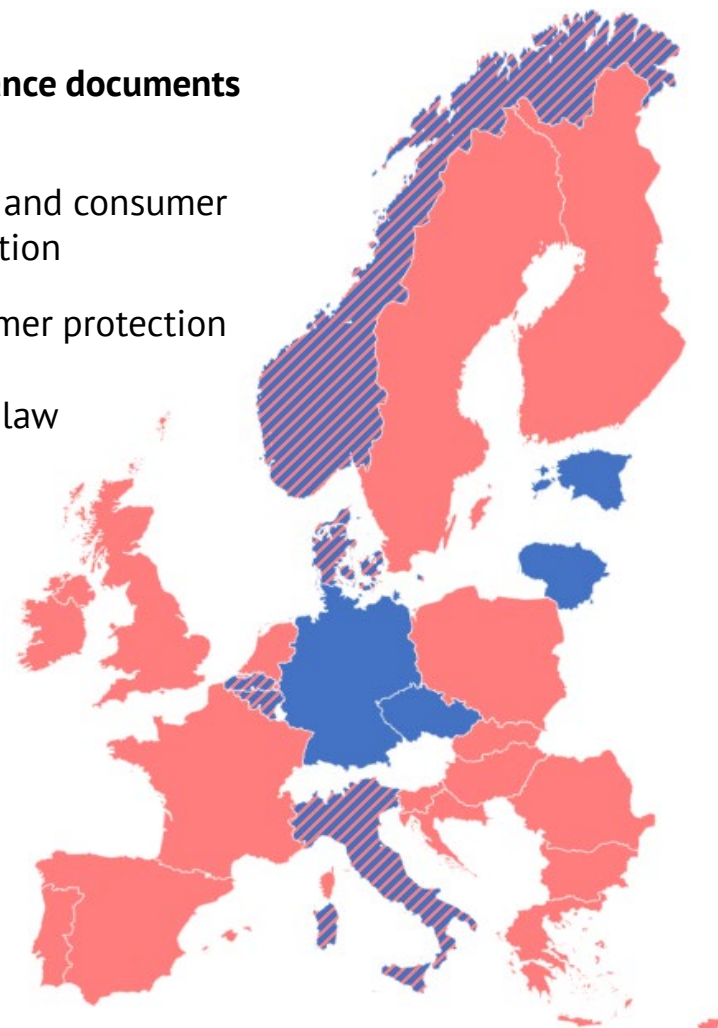
Identification of guidance documents for influencers at national level

- Yes
- No



Origin of guidance documents identified

- Media and consumer protection
- Consumer protection
- Media law



Thank you!

Questions to

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Closing Remarks

Matthias Traimer

Head of Department, Media Affairs,
Federal Ministry for Housing, Arts, Culture, Media and Sport

Maja Cappello

Head of Department for Legal Information
European Audiovisual Observatory

Thank you for coming!

A conference by
The European Audiovisual Observatory and
the Austrian Federal Ministry for Housing, Arts, Culture, Media and Sport

