

Mapping of national rules applicable to video-sharing platforms: Illegal and harmful content online

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Mapping of national rules applicable to video-sharing platforms:

Illegal and harmful content online

European Audiovisual Observatory



Foreword

More than a decade elapsed between the moment Karl Benz unveiled his *Patent-Motorwagen Nummer 1* in 1886, a three-wheeled carriage powered by gas considered to be the first production automobile in history, and the first attempts to regulate traffic by law in the early years of the 20th century. Due to the rapid proliferation of automobiles on the roads and the problems that came with it (notably road accidents), governments were forced both to improve the road infrastructure and, very importantly, to regulate traffic.

As at many other times in history, the unwanted side effects of an emerging technology – or, more specifically, of the applications it brought with it – forced the European legislator to introduce new rules. Video-sharing platforms (VSPs) are no exception. When the initial Audiovisual Media Services Directive 2010/13/EU¹ (AVMSD) was adopted in 2010, VSPs were not included in its regulatory scope simply because they did not play such a prominent role in our lives as they do today. As an example of the evolution of these services, YouTube went from around 65 000 videos uploaded daily and circa 20 million unique users per month in 2006² to 2.3 billion unique users a month and more than 500 hours of new content uploaded every minute in 2021.³ And together with this overwhelming expansion, a number of unwanted side effects appeared: content harmful to minors, hate speech, disinformation, etc. Side effects that required regulation.

VSPs became subject to a certain degree of regulation on the occasion of the revision of the AVMSD in 2018.⁴ While they were not considered eligible for the same kind of rules and obligations applicable to audiovisual media services with full editorial responsibility, the EU institutions deemed it necessary to engage them more actively in the control and moderation of their content. Just as, more than a century ago, speed limits, street signs and traffic lights became necessary, under the revised AVMSD, VSPs will have to fulfil certain rules and obligations related to the protection of minors from harmful content and of the general public from illegal content and content that incites violence or hatred. These range from flagging mechanisms to media literacy tools, to adapting the services' terms and conditions. Moreover, this will also have consequences for national regulatory authorities under whose purview VSPs will now fall.

It is against this general background that the European Commission has requested the European Audiovisual Observatory to prepare a mapping report on how the rules applicable to VSPs have been transposed into national legal frameworks.

The mapping report you are about to read tracks the measures in place to address illegal and harmful content online and will be followed by a second mapping report concerning the rules on commercial communications.

The report includes a pan-European comparative analysis, detailed country profiles, as well as the perspective of industry stakeholders. It reflects the state of play as at May

¹ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

² https://usatoday30.usatoday.com/tech/news/2006-07-16-youtube-views_x.htm

³ <https://www.globalmediainsight.com/blog/youtube-users-statistics/>

⁴ <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

2021, with the transposition process of the AVMSD still ongoing in many countries. The report therefore considers both existing rules and practices and newly introduced legislation which in many cases was not yet fully operational at the time of writing.

Such a complex and scattered legal snapshot could not have been achieved without the invaluable contribution of the following contributors: our national experts, who helped us gather the relevant information; our co-ordinating experts Jean-François Furnémont and Asja Rokša-Zubčević, who helped us structure and analyse the legal framework; a number of VSPs which shared valuable information on the systems they have put in place; and the media regulators across the European member states, who assisted us in checking the accuracy of the information. I would like to thank them all.

Strasbourg, October 2021

Maja Cappello

Head of the Department for Legal Information

European Audiovisual Observatory

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The report and the national factsheets were drafted by an international expert, Mr. Jean-François Furnémont, Founder and CEO of Wagner-Hatfield.

Pool of national experts for the collection of data

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1. Executive summary

1.1. Project objective

Following the adoption of the revised Audiovisual Media Services Directive 2018/1808⁵ (revised AVMSD), the European Commission asked the European Audiovisual Observatory (the Observatory) to prepare a mapping report on the legal framework and current practices relating to the regulation of video-sharing platforms (VSPs), with regard to the protection of minors from harmful content and of the general public from illegal content and content that incites violence or hatred.

The geographical scope covers the EU member states and the UK, which was still part of the Creative Europe programme at the time of the mapping. The Norwegian Government has contributed resources to include Norway in the mapping.

Although member states had to implement the provisions by 19 September 2020, the process is still ongoing in a number of countries.

1.2. Key findings

1.2.1. General approach

The transposition of the revised AVMSD at this point has resulted in the adoption of relevant legislation in each country which very much corresponds to the provisions of the revised AVMSD itself. There has not been much further elaboration or introduction of stricter obligations for VSPs.

However, the full extent of the transposition will depend on the adoption of subsequent secondary legislation. In some cases, this will happen in the period following the publication of this report and it will then be possible to draw up a comprehensive overview of the regulatory regime applicable to these services. For example, the Irish legislative act is in draft form at the time of writing this report. This piece of legislation, applicable to Ireland as a member state which has jurisdiction over major VSP actors offering services in Europe, envisages that the new Irish regulatory authority, foreseen by

⁵ Directive (EU) 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 provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.



the draft legislation, will have responsibility concerning all obligations and measures for VSPs, but the details still remain to be seen.

1.2.1. Definitions

The definitions related to video-sharing platforms (VSP service, VSP provider and user-generated video) provided for in the revised AVMSD are a notable inspiration for national legislation: it is clear that these definitions have, almost exclusively, been transposed verbatim or using similar wording to the revised AVMSD.

When it comes to the notions of “principal purpose”, “dissociable section” and “essential functionality” of a VSP service (referred to in the definition of the VSP service itself⁶ and further explained in the European Commission’s Guidelines on VSPs),⁷ it is clear that the territories covered either refer to the aforementioned guidelines for further clarity of the terms or provide explanatory details in legislative preparatory documents or secondary legislation.

1.2.2. Obligations and measures

The obligations of VSPs identified by the revised AVMSD include the adoption and implementation of appropriate measures applicable to programmes, user-generated videos and audiovisual commercial communications for the purpose of the protection of minors and the general public from certain content (such as hate speech and content which may impair the physical, mental or moral development of minors), as well as obligations related to certain aspects of commercial communications.⁸ And indeed one may observe that the vast majority of the provisions of the revised AVMSD have been included in the national legislation of the various countries concerned.

Besides the prohibition of certain content (the most harmful and detrimental), and the prohibition of the use of personal data of minors for commercial purposes, the emphasis is placed on the implementation of technical measures and flagging/notification systems,

⁶ A video-sharing platform is defined by Article 1 (1) (b) (aa) of the revised AVMSD as “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.” (emphasis added).

⁷ Communication from the Commission Guidelines on the practical application of the essential functionality criterion of the definition of a ‘video-sharing platform service’ under the Audiovisual Media Services Directive, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.223.01.0003.01.ENG&toc=OJ:C:2020:223:TOC.

⁸ See Article 28b of the AVMSD.



as well as the obligation to ensure that effective systems are provided to handle and resolve user complaints.

Regarding the practicability of the measures imposed on VSPs,⁹ a significant number of countries apply the criteria mentioned in the revised AVMSD. However some countries offer further criteria, such as prejudice and the illegality of content, the scope of VSPs or stipulate that the provider must exercise limited control over communications and any other measures which have been taken or are to be taken. In some instances, it is stated that the national regulatory authority and/or government can issue further guidance.

1.2.3. Regulation and enforcement

The relevant national regulatory authority has indeed a role to play in the assessment of the VSP measures, their supervision and enforcement, dispute resolution (in some instances), as well as in contributing to and developing self- and co-regulatory mechanisms, identified and relied upon to a much larger extent now.

Media and information literacy activities are called for, both in terms of obligations for VSPs, but they are also understood as activities to be undertaken by wider societal stakeholders, including by the relevant national regulatory authorities.

It should, however, be emphasised that, in some cases, the establishment of new regulatory bodies is envisaged, either through mergers or by the integration of existing regulatory structures into new bodies.

As some aspects of the scope of the legislation encompass areas covered by other public institutions (e.g. data protection), it is clear that co-operative arrangements will be particularly important in order to ensure the smooth and effective application of the relevant rules.

Extremely valuable insight into the implementation of relevant rules has been provided by the relevant national regulatory authorities especially for the purpose of this report. Besides identifying challenges from the perspective of these institutions, what appears to be central is the need for enhanced cooperation between media regulatory bodies, especially international cooperation, reflecting the mainly cross-border nature of the services offered by the VSPs themselves.

⁹ See Article 28b(3) of the AVMSD: “Member States 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.” (emphasis added).



2. Methodology and structure of the mapping report

2.1. Project objective

The revision of the Audiovisual Media Services Directive¹⁰ (revised AVMSD), was proposed by the European Commission in May 2016, in order to ensure a fairer regulatory environment for the entire audiovisual sector, strengthen the protection of minors and reinforce the battle against hate speech in all audiovisual content, promote European audiovisual productions and guarantee the independence of audiovisual regulators. It was adopted in 2018, extending the scope of application of the 2010 AVMSD to cover video-sharing platforms (VSPs) for the first time.

The European Commission asked the European Audiovisual Observatory (the Observatory) to prepare a mapping report on the legal framework and current practices relating to regulation of VSPs with regard to the protection of minors from harmful content and of the general public from illegal content and content that incites violence or hatred. The geographical scope covers the EU member states and the UK, which was still part of the Creative Europe programme at the time of the mapping. Norway has been included thanks to separate financing from the Norwegian Government.

The original deadline to implement the provisions of the AVMS Directive by 19 September 2020 was not met by a number of countries and is still ongoing in some. The national data for this report covers the relevant information up to May 2021, when the collection of the national factsheets was finished, in order to prepare the comparative analyses.¹¹

This report aims at identifying the different laws, rules and current practices, as well as ongoing reforms implementing the AVMS Directive, in the EU member states, the UK and Norway relating to the protection of minors from harmful content and the protection of the general public from illegal content and content that incites violence and hatred on VSPs, including, but not limited to:

- legal definition of VSPs in existing legislation;
- categories of obligations;

¹⁰ Directive (EU) 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 provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, available at <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

¹¹ As the original deadline for member states to implement the provisions of the AVMS Directive by 19 September 2020 was not met by a number of administrations, the collection of relevant national data for this report was extended until May 2021, in order to obtain the latest information and include it in this publication. See https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2165



- national instruments already in place to transpose/implement the new obligations;
- overview of the main issues faced by stakeholders, including platforms and national authorities.

The mapping includes the information from 27 EU member states (including the French and Flemish speaking communities of Belgium), as well as the United Kingdom and Norway, totalling 30 national responses.

2.2. Methodology

The methodology adopted by the Observatory is centred around the collection and analysis of national data, done by means of a standardised and pre-approved questionnaire designed by the Observatory, submitted for completion by national experts, and in turn checked by the relevant national regulatory authorities, who also provided their input relative to the main regulatory challenges in this regard. In addition, the Observatory approached several industry stakeholders so as to gather their views on the topic.

The methodology can be summed up as follows:

- the choice of the international experts to provide assistance throughout the mapping and the elaboration of a comparative analysis;
- the choice of a pool of national experts; mainly academics and independent researchers and consultants;
- the elaboration of a standardised questionnaire filled in by each national expert; one questionnaire per country was completed, with the exception of Belgium, where a questionnaire was completed for both the French and the Flemish Communities; and questionnaire responses cross-checked by the relevant national regulatory authorities;
- the preparation of a short questionnaire for relevant national regulatory authorities relevant to the identification of regulatory aspects;
- the preparation of a short questionnaire for industry stakeholders to identify their progress so far, the obstacles they encountered on the way and their concerns.

The questionnaire aimed at identifying, for each country, the different laws, rules and current practices, as well as ongoing reforms implementing the revised AVMSD, in the EU member states, Norway and the UK relating to the protection of minors from harmful content and the protection of the general public from illegal content and content that incites violence and hatred on VSPs. It also aimed at identifying certain obligations of the VSPs around commercial communications, including, but not limited to the legal definition of VSPs in existing legislation and categories of obligations, together with an overview of the main issues faced by stakeholders, including platforms and national authorities.



2.3. Structure of the report

The national summaries are structured around five sections:

- the first section provides the definition given by each national lawmaker of the key concepts for the present study, which are: VSP service, VSP provider and user-generated video; “principal purpose”, “dissociable section” and “essential functionality” of a VSP service;
- the second section provides an overview of the measures to be put in place by VSPs related to the protection of minors and the general public and certain obligations related to commercial communications, measures being inclusive of; adapting terms and conditions of the VSP service; measures regarding commercial communications; measures allowing users to report or flag content and explaining what effect has been given to reporting and flagging; measures regarding content which may impair the physical, mental or moral development of minors; measures regarding the handling and resolution of users' complaints; measures regarding media literacy; measures regarding the processing of personal data of minors for commercial purposes;
- the third section provides an insight into other relevant provisions with regards to the protection of minors, including provisions related to commercial communications and/or minors' exposure to advertising for alcohol products and foods high in fat, sugar and salt in commercial communications;
- the fourth section provides information on the practical aspect of the implementation of applicable rules, including information on: regulation and enforcement, regulatory bodies in charge, the existence of a notification/registration system; compliance, enforcement and sanctioning powers; the development of self- or co-regulatory codes or schemes; out-of-court redress mechanisms for users; rights of users before the courts;
- section five provides for the views and opinions of the national regulatory authorities on anticipated regulatory challenges, experience in regulating VSPs prior to adoption of the revised AVMSD, as well as on the issue of cross-border cooperation.

The comparative legal analysis mirrors the structure of the national legal summaries and provides an analysis aimed at highlighting the trends and patterns in the approach of national administrations towards the newly introduced obligations for VSPs.

In order to provide a comprehensive overview of the applicable legislation, this report presents the status of the relevant laws and groups them into those already adopted and those still in the legislation adoption procedure.¹²

¹² It should be noted that this information is to be regarded from the time of preparation of the national factsheets (by the end of May 2021) found in the annex to this report, which might not be fully up to date in terms of the adoption procedures.



In that respect, there are 12 legislative proposals in the adoption procedure (CY, CZ, EE, ES, HR, IE, IT, MT, PL, RO, SI, NO, SK), while 18 cases report the finalisation of the transposition process (AT, BE FR, BE NL, BG, DE, DK, FI, FR, GB, GR, HU, LT, LU, LV, MT, NL, PT, SE). Some matters will be further dealt with through secondary legislation, which will be forthcoming.

It should be noted that this number also includes Norway, where the provisions of the revised AVMSD related to VSPs have not yet been implemented as per the European Economic Area (EEA) agreement, but the Norwegian Government has produced an EEA position note on the changes in the AVMS Directive.¹³ In case the revised AVMSD is to be incorporated, the Norwegian Government has signalled the changes needed in the aforementioned laws, while, in parallel to the implementation of the AVMSD, the Norwegian Government appointed in 2020 the Freedom of Expression Commission to review the social, technological, legal and economic frameworks for freedom of expression in today's society. The Commission's report in the form of an Official Norwegian Report is to be presented to the Ministry of Culture by 1 March 2022.

For the purpose of this report, the country acronyms in all the tables are marked differently according to the transposition legislation status; hence, cases in which the legislation is adopted are marked in bold, while those where the legislation is pending adoption are left unmarked.

¹³ <https://www.regjeringen.no/no/sub/eos-notatbasen/notatene/2016/juni/forslag-til-endringer-i-amt-direktivet-/id2503512/>.



3. Comparative legal analysis

The comparative analysis looks at the approach that the covered territories took in adopting the regulatory framework for VSPs, starting from a review of the status of related legislation, whether adopted or still pending adoption. It looks into the definition of the related terms, followed by an overview of the obligations imposed on VSP providers, bearing in mind in particular the obligations relative to the protection of minors, the general public and commercial communications. It then moves on to an examination of the practicability of the measures imposed on VSP providers, in terms of identifying the relevant regulatory body in charge of regulation, registration/notification systems envisaged for VSPs, in addition to the levels of compliance, enforcement and sanctioning powers, the self- or co-regulatory codes or schemes and redress mechanisms available for users of VSP services. Finally, the analysis offers a reference pool of relevant national studies and research activities on the topic of regulation of VSPs.

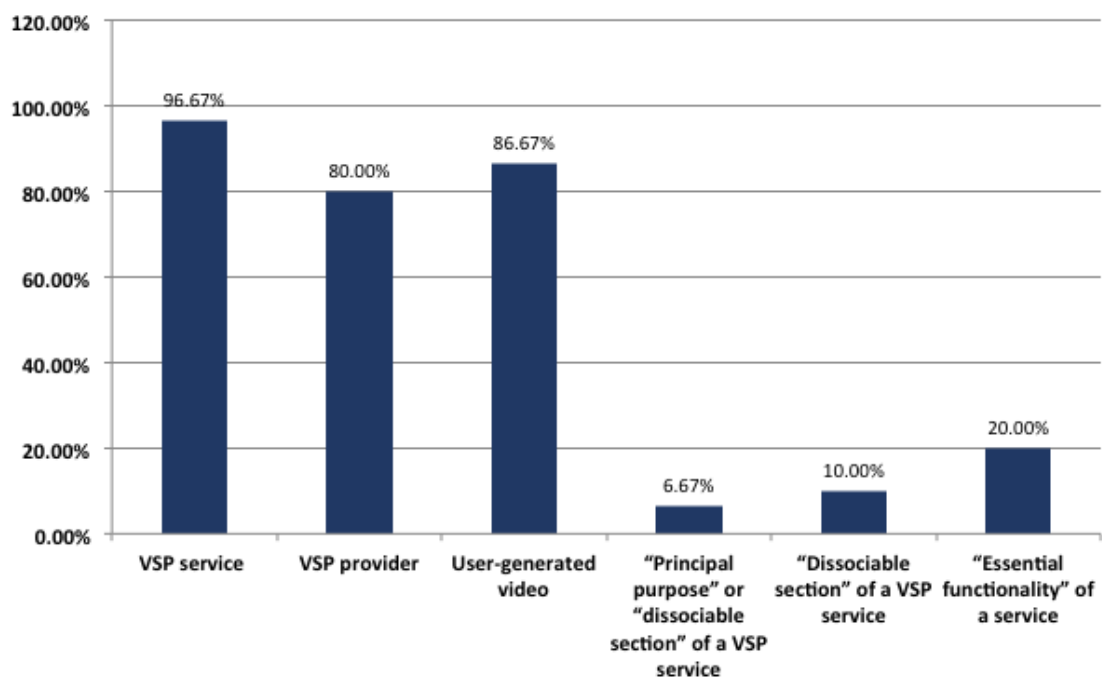
3.1. Definitions and scope

Definitions of concepts related to VSPs, found in the AVMSD include:

- VSP service;
- VSP provider;
- user-generated video;
- “principal purpose” or “dissociable section” of a VSP service;
- “essential functionality” of a service.



Figure 1. Share of affirmative responses for the presence of each definition among the territories covered



Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

Table 1. Overview of existence of relevant definitions

	VSP service	VSP provider	User-generated video	"Principal purpose" or "dissociable section" of a VSP service	"Dissociable section" of a VSP service	"Essential functionality" of a service
AT	Yes	Yes	Yes	No	No	No
BE FR	Yes	Yes	Yes	No	Yes	Yes
BE NL	Yes	Yes	Yes	Yes	Yes	Yes
BG	Yes	Yes	Yes	No	No	No
CY	Yes	Yes	Yes	No	No	No
CZ	Yes	Yes	Yes	No	No	Yes
DE	Yes	Yes	Yes	No	No	No
DK	Yes	Yes	Yes	No	No	No
EE	Yes	Yes	Yes	No	No	No
ES	Yes	Yes	Yes	No	No	No
FI	Yes	Yes	Yes	No	No	No
FR	Yes	No	No	No	No	No
GB	Yes	Yes	No	Yes	Yes	Yes
GR	Yes	Yes	Yes	No	No	No
HR	Yes	No	Yes	No	No	No



	VSP service	VSP provider	User-generated video	“Principal purpose” or “dissociable section” of a VSP service	“Dissociable section” of a VSP service	“Essential functionality” of a service
HU	Yes	Yes	Yes	No	No	No
IE	Yes	No	Yes	No	No	No
IT	Yes	Yes	No	No	No	No
LT	Yes	Yes	Yes	No	No	No
LU	Yes	Yes	Yes	No	No	No
LV	Yes	No	Yes	No	No	No
MT	Yes	Yes	Yes	No	No	No
NL	Yes	Yes	Yes	No	No	No
NO	Yes	No	Yes	No	No	No
PL	Yes	Yes	Yes	No	No	Yes
PT	Yes	Yes	Yes	No	No	Yes
RO	Yes	Yes	Yes	No	No	No
SE	Yes	Yes	Yes	No	No	No
SI	Yes	Yes	Yes	No	No	No
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD					

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.1.1. VSP service

Article 1 (1) (b) (aa) of the revised AVMSD offers the following definition of a VSP service:

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.

The identical definition as provided for in the revised AVMSD is found in 20 cases (AT, BE FR, BE NL, BG, CY, DK, ES, FI, HR, IE, IT, LT, LU, LV, MT, NO, PL, RO, SI, SK)¹⁴ or corresponding to it in five cases (FR, GB, NL, PT, SE). Some variants are found in, e.g. the German definition, which defines video-sharing services, without reference to platforms, due, according to the

¹⁴ In the case of Slovakia, all data on definitions in this section are based on expected definitions which have not yet been published.



explanatory memorandum, to the avoidance of unnecessary overlaps with the regulations on media platforms and user interfaces. In other cases, this was due to the definition of a VSP service falling under the scope of the information society (EE), or determining that this type of service is commercial in its nature and is performed on a regular basis for economic purposes (HU); in the case of Greece there was an additional wording in order to clearly determine the scope of applicability to social networks.

Table 2. Definition of a VSP service¹⁵

	VSP service
AT	Identical to the text of the AVMSD
BE FR	Identical to the text of the AVMSD
BE NL	Identical to the text of the AVMSD
BG	Identical to the text of the AVMSD
CY	Identical to the text of the AVMSD
CZ	A VSP service is defined as the information society service of a platform for sharing video recordings, with the rest of the definition corresponding to the AVMSD
DE	The VSP service definition defines video-sharing services, without reference to platforms, due, according to the explanatory memorandum, to the avoidance of unnecessary overlaps with the regulations on media platforms and user interfaces
DK	Identical to the text of the AVMSD
EE	A VSP service is defined as the information society, while the rest of the definition corresponds to the text of the AVMSD
ES	Identical to the text of the AVMSD
FI	Identical to the text of the AVMSD
FR	Closely matches the text of the AVMSD
GB	Corresponding to the text of the AVMSD
GR	Wording added to the AVMSD definition in order to clearly determine the scope of applicability to social networks
HR	Identical to the text of the AVMSD
HU	Addition to the definition from the AVMSD in order to make clear that this type of service is commercial in its nature and is performed on a regular basis for economic purposes
IE	Identical to the text of the AVMSD
IT	Identical to the text of the AVMSD
LT	Identical to the text of the AVMSD
LU	Identical to the text of the AVMSD
LV	Identical to the text of the AVMSD
MT	Identical to the text of the AVMSD
NL	Closely matches the text of the AVMSD
NO	Identical to the text of the AVMSD
PL	Identical to the text of the AVMSD

¹⁵ Note that the difference between the legislative provisions which are *identical* to the text of the AVMSD and those *corresponding* to it is predominantly in the linguistic and national legal-writing styles, but the context of the provisions is consistent with the text of the AVMSD.



	VSP service
PT	Closely matches the text of the AVMSD
RO	Identical to the text of the AVMSD
SE	Closely matches the text of the AVMSD
SI	Identical to the text of the AVMSD
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.1.2. VSP provider

Article 1 (1) (e) (da) of the revised AVMSD defines a VSP provider as: “the natural or legal person who provides a video-sharing platform service”.

In 19 cases (AT, BE FR, BE NL, BG, CY, DK, EE, ES, FI, GB, HU, IT, LT, LU, MT, NL, RO, SI, SK), the definition of the VSP provider is identical to that in the revised AVMSD, or closely matching it (PT). Variations in terms of lacking the distinction between a natural and legal person (therefore covering both) are found in three cases (CZ, DE, SE), or in terms of emphasising that VSP services do not have general control over what videos are available, but over the manner in which videos are organised (GR), and in one case the definition includes commercial partnership along with a distinction between a natural and legal person (PL). Four cases (FR, HR, IE, LV) do not provide for the definition of a VSP provider in the transposition legislation.

Table 3. Definition of a VSP provider

	VSP provider
AT	Identical to the text of the AVMSD
BE FR	Identical to the text of the AVMSD
BE NL	Identical to the text of the AVMSD
BG	Identical to the text of the AVMSD
CY	Identical to the text of the AVMSD
CZ	The definition includes references to services provided via platforms for sharing video recordings, and lacks any distinction between a natural and a legal person (therefore covering both)
DE	The definition lacks any distinction between a natural and a legal person (therefore covering both)
DK	Identical to the text of the AVMSD
EE	Identical to the text of the AVMSD
ES	Identical to the text of the AVMSD
FI	Identical to the text of the AVMSD
FR	No definition specified in the transposition legislation



	VSP provider
GB	Identical to the text of the AVMSD
GR	Indicates that the person providing these services does not have general control over what videos are available, but does have general control over the manner in which videos are organised
HR	No definition specified in the transposition legislation
HU	Identical to the text of the AVMSD
IE	No definition specified in the transposition legislation
IT	Identical to the text of the AVMSD
LT	Identical to the text of the AVMSD
LU	Identical to the text of the AVMSD
LV	No definition specified in the transposition legislation
MT	Identical to the text of the AVMSD
NL	Identical to the text of the AVMSD
NO	EEA process pending
PL	The definition closely matches the text of the AVMSD and adds commercial partnership along with a distinction between a natural and legal person
PT	Closely matches the text of the AVMSD
RO	Identical to the text of the AVMSD
SE	The definition lacks any distinction between a natural and legal person (therefore covering both)
SI	Identical to the text of the AVMSD
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

3.1.3. User-generated video

In Article 1 (1) (d) (ba) of the revised AVMSD, user-generated video is defined as:

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.

In the vast number of cases (20), the definition offered by the revised AVMSD is transposed verbatim (AT, BG, CY, DE, DK, EE, ES, GR, HR, HU, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK), while in two cases (IE, MT), the definitions closely match it, but are specifically related to user-generated content. In one case, the term “video” is defined so as to include programmes and user-generated videos (GB), while another legislative piece (FR) provides no definition but makes reference to “user-generated content”. Norway includes the definition of user-generated content in broadcasting-related legislation.



Table 4. Definition of user-generated video

	User-generated video
AT	Identical to the text of the AVMSD
BE FR	Closely matches the text of the AVMSD
BE NL	The definition provides for the understanding of the term by including a reference to “a series of sounds”
BG	Identical to the text of the AVMSD
CY	Identical to the text of the AVMSD
CZ	Defines user-generated video as recordings, while the rest of the definition corresponds to the text of the AVMSD
DE	Identical to the text of the AVMSD
DK	Identical to the text of the AVMSD
EE	Identical to the text of the AVMSD
ES	Identical to the text of the AVMSD
FI	Defines user-generated video by using the word “unit”, with the rest of the definition corresponding to the text of the AVMSD
FR	No definition, but the Law on freedom of communication (1986) mentioned “user-generated content”
GB	The term “video” is defined so as to include programmes and user-generated videos
GR	Identical to the text of the AVMSD
HR	Identical to the text of the AVMSD
HU	Identical to the text of the AVMSD
IE	Provides for the definition of user-generated content, otherwise closely matches the text of the AVMSD
IT	Adoption of relevant legislation pending
LT	Identical to the text of the AVMSD
LU	Identical to the text of the AVMSD
LV	Identical to the text of the AVMSD
MT	Provides for the definition of user-generated content, with the rest of the definition corresponding to the text of the AVMSD
NL	Identical to the text of the AVMSD
NO	Broadcasting-related legislation defines user-generated content as utterances that a media user has published outside the editor’s management and control. For further details, EEA process pending.
PL	Identical to the text of the AVMSD
PT	Identical to the text of the AVMSD
RO	Identical to the text of the AVMSD
SE	Identical to the text of the AVMSD
SI	Identical to the text of the AVMSD
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire



3.1.4. “Principal purpose”, “dissociable section” and “essential functionality” of a VSP service

The terms “principal purpose”, “dissociable section” and “essential functionality” of a VSP service are found in the definition of the service itself. Recital (3) of the revised AVMSD clarifies the terms and explains that the obligations put forward are applicable:

only to those services the principal purpose of which is the provision of programmes in order to inform, entertain or educate. The principal purpose requirement should also be considered to be met if the service has audiovisual content and form which are dissociable from the main activity of the service provider, such as stand-alone parts of online newspapers featuring audiovisual programmes or user-generated videos where those parts can be considered dissociable from their main activity. A service should be considered to be merely an indissociable complement to the main activity as a result of the links between the audiovisual offer and the main activity such as providing news in written form. As such, channels or any other 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.

Recital (5) of the revised AVMSD explains these terms in reference to the applicability of their scope vis-à-vis social media services, while emphasising that:

...the aim 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. The provision of programmes and user-generated videos could be considered to constitute an essential functionality of the social media service if the audiovisual content is not merely ancillary to, or does not constitute a minor part of, the activities of that social media service.

The European Commission issued guidelines on VSPs,¹⁶ with the aim of ensuring clarity, effectiveness and consistency of implementation of the revised AVMSD, relative to the practical application of the essential functionality criterion of the definition of a VSP service. The guidelines offer recommendations and criteria for the identification of VSP services, with the explanation of the terms stemming from the definition of such services in terms of the “principal purpose”, “dissociable section” and “essential functionality”.

With this in mind, it is clear that the majority of the covered territories opted out of providing definitions for these terms, or, provided the explanatory details regarding applicability in preparatory documents (BE FR, BE NL, FI, SE) for the primary legislation (GB, LV). In two cases (BE NL and SI), the pieces of legislation refer to the EC guidelines on VSPs, which are to be the guiding principle in the application of the rules. Two member states

¹⁶ Communication from the Commission: Guidelines on the practical application of the essential functionality criterion of the definition of a ‘video-sharing platform service’ under the Audiovisual Media Services Directive, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.223.01.0003.01.ENG&toc=OJ:C:2020:223:TOC.



(CZ, EE) combined a reference to the regulatory authority’s guidelines or legislative preparatory acts with a reference to the EC guidelines on VSPs. In one case (PT), a definition of one of the concepts, that of “essential functionality” alone, is provided for in the legislation. Some explanatory notions on interpretation of these concepts are provided for in one case (PL).

Table 5. Definition of “principal purpose”, “dissociable section” or “essential functionality”

	Definition of “principal purpose”, “dissociable section” or “essential functionality”
AT	No definition specified in the transposition legislation
BE FR	No definition, but the commentary to the primary legislation provides guidance to the term
BE NL	No definition, but the explanatory memorandum to the legislation provides for additional insight into this, intended to focus the applicability of the concept to social media services by referring to the EC guidelines on VSPs
BG	No definition specified in the transposition legislation
CY	No definition specified in the transposition legislation
CZ	The reference to “essential functionality” is derived from the definition of the VSP service and reference to the EC guidelines on VSPs and those which are to be published by the media regulatory authority
DE	No definition specified in the transposition legislation
DK	No definition specified in the transposition legislation
EE	Explanatory memorandum provides for the definition of some provisions on essential functionality and refers to the EC guidelines on VSPs
ES	No definition specified in the transposition legislation
FI	No definition, but the definition from the AVMSD has been included in the government legal proposal’s explanatory documentation
FR	No definition specified in the transposition legislation
GB	Terms referred to in national regulator’s guidelines
GR	No definition specified in the transposition legislation
HR	No definition specified in the transposition legislation
HU	No definition specified in the transposition legislation
IE	No definition specified in the transposition legislation
IT	No definition specified in the transposition legislation
LT	No definition specified in the transposition legislation
LU	No definition specified in the transposition legislation
LV	The national regulatory authority is tasked with preparing the guidelines intended to, <i>inter alia</i> , provide definitions of these concepts
MT	No definition specified in the transposition legislation
NL	No definition specified in the transposition legislation
NO	EEA process pending
PL	No definition specified in the transposition legislation, but it stipulates that account shall be taken of the relationship between the audiovisual content and the principal economic activity, the quantitative and qualitative importance of the audiovisual content for that service, the means by which the audiovisual content generates revenue and the availability



	Definition of “principal purpose”, “dissociable section” or “essential functionality”
	within the service of tools designed to increase the visibility or the attractiveness of the audiovisual content
PT	Legislation provides for the definition of “essential functionality”
RO	No definition specified in the transposition legislation
SE	No definition specified in the transposition legislation, but referred to in legislation preparatory materials
SI	Reference is made to the EC guidelines on VSPs, stipulating that in case of doubt, the EC guidelines shall be observed
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.2. Obligations and measures

According to Article 28b (1) of the revised AVMSD, member states must ensure that VSP providers under their jurisdiction take appropriate measures relative to programmes, user-generated videos and commercial communications in order to protect minors from content that may impair their physical, mental or moral development, as well as the general public from content containing incitement to violence or hatred directed against a group of persons or a member of a group or containing content the dissemination of which constitutes an activity which is a criminal offence under Union law (public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia).

Article 28b (2) sets out further obligations by requiring the member states to ensure that VSP providers under their jurisdiction comply with the requirements with respect to audiovisual commercial communications that are marketed, sold or arranged by those VSP providers. The obligations extend to the requirement for VSP providers to inform users where programmes and user-generated videos contain audiovisual commercial communications (provided that the VSP provider has knowledge of that fact). Finally, the AVMSD encourages the use of co-regulation and the fostering of self-regulation through codes of conduct:

...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 intake in the overall diet is not recommended.

Article 28 b (3) stipulates that 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.

3.2.1. Adapting terms and conditions of the VSP service

Article 28b (3) (a) is the first of a set of obligations for VSP providers, under the umbrella of the requirements for taking appropriate measures relative to the inclusion and application in the VSP's terms and conditions of protective measures vis-à-vis programmes, user-generated videos and audiovisual commercial communications offered on their platforms which may impair the physical, mental or moral development of minors and/or those containing incitement to violence, hatred or discrimination directed against a group of persons or a member of a group, or activities which constitute a criminal offence under EU law such as public provocation to commit a terrorist offence.

In the majority of cases this is transposed into national legislations by citing the provisions of the AVMSD verbatim. In doing this, the emphasis is put on the easiness, understandability and simplicity, as well as the accessibility of the VSP's terms and conditions. In some instances (AT, BG), the terms and conditions included and applied by the VSPs have to be reported to the national regulatory authority or a public authority in charge of implementing the obligations stemming from the AVMSD. A new Irish regulatory authority, anticipated in the draft legislation, will have the responsibility vis-à-vis all obligations and measures for VSPs, and it remains to be seen what direction these obligations will take, pending the adoption of the primary and secondary legislation. There is one case (DE) in which the VSPs are obliged to effectively agree with the users of VSP services that the distribution of illegal commercial communications is prohibited. Some member states (LV, NL, SI) identify the adaptation of the terms and conditions of VSP services (as well as all other compulsory measures and obligations put forward for VSPs) as falling under the self-regulatory regimes.

Table 6. Terms and conditions of the VSP service

	Terms and conditions of the VSP service
AT	VSPs must ensure the issuing and announcement of easily understandable and accessible general terms and conditions, which have to be reported to the national regulatory authority, which, in turn, publishes them
BE FR	Requirements for transparent, user-friendly, simple to use and effective measures to protect minors and the inclusion of these measures in the general terms of use of the VSP
BE NL	The obligations of the revised AVMSD are established without further specifications
BG	The obligations of the revised AVMSD are established without further specifications and measures are to be agreed with the national regulatory authority
CY	The obligations of the revised AVMSD are established without further specifications
CZ	The obligations of the revised AVMSD are established without further specifications



	Terms and conditions of the VSP service
DE	VSPs should be obliged to effectively agree with their users that users are prohibited from distributing illegal commercial communications
DK	The obligations of the revised AVMSD are established without further specifications
EE	The obligations of the revised AVMSD are established without further specifications. Adds a requirement for warnings at the beginning of the programme, and an appropriate classification symbol during the entire programme, user-generated video or business message
ES	The obligations of the revised AVMSD are established without further specifications
FI	The obligations of the revised AVMSD are established without further specifications. Provides for the prohibition of the uploading of programmes, user-generated videos and commercial communications which incite the commission of criminal offences (e.g. an offence committed with a terrorist intent, the distribution of a sexually offensive picture depicting a child, ethnic agitation)
FR	The obligations of the revised AVMSD are established without further specifications
GB	Establishes the measures that would be appropriate for VSPs in order to protect users, inclusive of setting the terms and conditions with a flagging mechanism for users. It also suggests that the terms and conditions refer to a prohibition against uploading a video containing relevant harmful material to the service
GR	The obligations of the revised AVMSD are established without further specifications
HR	The obligations of the revised AVMSD are established without further specifications
HU	The obligations of the revised AVMSD are established without further specifications, emphasising technical solutions enabling the protection of users from harmful content
IE	No detailed information available yet, as the legislation envisages the creation of the Media Commission which shall have the responsibility in relation to these measures
IT	While the adoption of the relevant legislation is pending, current Law Decree 28/2020 states that agreements for the provision of electronic communication services must include parental control or filtering measures of inappropriate content for minors and the blocking of adult content
LT	VSP providers have the possibility to opt for measures in terms of the inclusion and application of terms and conditions
LU	The obligations of the revised AVMSD are established without further specifications
LV	The obligations of the revised AVMSD are established without further specifications. Stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
MT	The obligations of the revised AVMSD are established without further specifications
NL	The obligations of the revised AVMSD are established without further specifications. Stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
NO	EEA process pending
PL	The obligations of the revised AVMSD are established without further specifications, detailing the obligatory provision of information to users
PT	The obligations of the revised AVMSD are established without further specifications
RO	The obligations of the revised AVMSD are established without further specifications
SE	The obligations of the revised AVMSD are established without further specifications, without including a list of the measures, but the legislative preparatory work clarifies that the appropriate measures shall consist of the measures listed in the AVMSD, as appropriate



Terms and conditions of the VSP service	
SI	The obligations of the revised AVMSD are established without further specifications.. However, it is up to the VSPs to decide which measures will be implemented, but services are required to establish the rules prohibiting the publishing of videos that are in conflict with the obligations in relation to complaint procedures and the removal of illegal content
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.2.2. Measures regarding commercial communications

Although general obligations for VSPs regarding commercial communications do not fall within the scope of this publication, rules for advertisers regarding the protection of minors must also be included within the scope of the study, in reference to the rules governing VSPs aimed at limiting minors' exposure to advertising for alcohol products and high fat, sugar and salt foods (HFSS foods). This includes any specific rules, limits or guidance to advertisers and users, as well as reporting/flagging mechanisms and rules governing VSPs aimed at ensuring that advertising does not cause physical, mental or moral detriment to minors. This, in turn, includes any specific rules, limits or guidance to advertisers and users on the characteristics of adverts aimed at minors, as well as reporting/flagging mechanisms according to Article 28b (1) (a) of the AVMS Directive.

According to Article 28b (3) (b), VSP providers are obliged to include and apply in the terms and conditions of the VSP services the requirements set out in Article 9 (1) for audiovisual commercial communications that are not marketed, sold or arranged by the VSPs, which refer to the requirements for:

- commercial communications to be readily recognisable;
- the prohibition of surreptitious and commercial communications for: cigarettes and other tobacco products, electronic cigarettes and refill containers and for medicinal products and medical treatment available only on prescription in the member state;
- prohibiting the use of subliminal techniques; commercial communications which prejudice respect for human dignity; the inclusion or promotion of any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- prohibiting the encouragement of behaviour prejudicial to health or safety, or behaviour grossly prejudicial to the protection of the environment;
- prohibiting commercial communications for alcoholic beverages aimed specifically at minors; the encouragement of immoderate consumption of alcoholic beverages; commercial communications which may cause physical, mental or moral detriment to minors.



In connection to this, Article 28b (3) (c) stipulates that VSP providers, as appropriate, shall include a functionality for users who upload user-generated videos to declare whether such videos contain commercial communications “as far as they know or can be reasonably expected to know.”

Generally, these requirements are transposed verbatim, with emphasis on the requirement that the information for users must be clear, simple and understandable (BE FR, BG, EE, FI, FR). The agreement to be reached with the users applies in these former cases, as well in Germany, with enabling labelling functions. In some cases (IE, FR, PL), it is envisaged that the national regulatory authority will have the responsibility in this regard. Self-regulatory mechanisms are called upon in this regard, as well (LV, NL, SI).

Table 7. Measures regarding commercial communications

	Measures regarding commercial communications
AT	The obligations of the revised AVMSD are established without further specifications, elaborating on the obligation to ensure, by means of the general terms and conditions, that users comply with the rules vis-à-vis commercial communications and the protection of minors, with guaranteed explanatory functions for users
BE FR	The obligations of the revised AVMSD are established without further specifications, requiring explanatory functions for users
BE NL	The obligations of the revised AVMSD are established without further specifications
BG	The obligations of the revised AVMSD are established without further specifications, while VSPs shall draw up general terms and conditions, which shall be agreed with the regulatory authority
CY	The obligations of the revised AVMSD are established without further specifications
CZ	The obligations of the revised AVMSD are established without further specifications
DE	The obligations of the revised AVMSD are established without further specifications, emphasising the obligation of VSPs to effectively agree with their users on restrictions vis-à-vis commercial communications, including a labelling and marking function for advertising, for communication uploaded by users as well, if the VSP has obtained knowledge of it through, e.g. a labelling mechanism
DK	The obligations of the revised AVMSD are established without further specifications
EE	The obligations of the revised AVMSD are established without further specifications, emphasising the obligation of VSPs to explicitly inform users
ES	The obligations of the revised AVMSD are established without further specifications
FI	The obligations of the revised AVMSD are established without further specifications, emphasising the obligation of VSPs to explicitly inform users
FR	The obligations of the revised AVMSD are established without further specifications. Media regulatory authority will have to ensure that VSPs clearly inform users about the existence of commercial communications in videos
GB	The obligations of the revised AVMSD are established without further specifications
GR	The obligations of the revised AVMSD are established without further specifications
HR	The obligations of the revised AVMSD are established without further specifications
HU	The obligations of the revised AVMSD are established without further specifications, emphasising the effectiveness of measures



Measures regarding commercial communications	
IE	The anticipated new Media Commission will have the responsibility in relation to these measures; hence no information available at this point
IT	Adoption of relevant legislation pending
LT	The obligations of the revised AVMSD are established without further specifications
LU	The obligations of the revised AVMSD are established without further specifications
LV	Establishes the obligations corresponding to the AVMSD text and stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
MT	The obligations of the revised AVMSD are established without further specifications
NL	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
NO	EEA process pending.
PL	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the role of the national regulatory authority which may, by means of a regulation, determine different aspects of these obligations
PT	The obligations of the revised AVMSD are established without further specifications
RO	The obligations of the revised AVMSD are established without further specification.
SE	The obligations of the revised AVMSD are established without further specifications, without including a list of the measures, but the legislative preparatory work clarifies that the appropriate measures shall consist of the measures listed in the AVMSD, as appropriate
SI	The obligations of the revised AVMSD are established without further specifications, obliging VSP platforms to formulate and make public rules setting out legal requirements and the possibility of filing a report for violation of the rules, as well as the procedure for dealing with reports of breaches of the rules, etc.
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.2.3. Measures allowing users to report or flag content and explaining what effect has been given to such reporting and flagging

In accordance with Article 28b (3) (d), VSP providers are required, as appropriate, to establish and operate transparent and user-friendly mechanisms for users to report or flag any content which is in violation of the obligation to protect minors from content that may impair their physical, mental or moral development, as well as protecting the general public from content containing incitement to violence or hatred directed against a group of persons or a member of a group or containing content the dissemination of which constitutes an activity which is a criminal offence.



Further, according to Article 28b (3) (e), VSP providers are obliged to establish and operate systems through which they are to explain to their users what effect has been given to the user's reporting and flagging of content in violation of protective principles, that is, any content which is detrimental to minors and/or content containing incitement to violence or hatred/dissemination of content which constitute a criminal offence.

Reporting system requirements are all included in national legislations, with an emphasis on the importance of accessibility, availability, effectiveness, transparency and manageability of the reporting systems to be put in place by the VSPs. In some instances (BG, PL), national regulatory authorities are due to introduce secondary legislation that will allow them to adopt the criteria for the assessment of unfavourable content or content that creates a risk of harm to the physical, mental, moral and/or social development of children (BG) or content threatening the physical, mental or moral development of minors, containing incitement to violence or hatred towards a group of persons or containing content likely to facilitate the commission of a terrorist offence (PL), subject to potential users' reporting. Some covered territories (CZ, PL) opted for the introduction of processing deadlines for VSPs on receipt of users' content reports. Again, the role of the national regulatory authority is recognised in these matters, in terms of the provision of specific rules in this regard (FR, IE), and also where the regulatory authority stipulates that VSPs should rely on self-regulatory mechanisms (LV, NL, SI).

Table 8. Reporting and flagging measures

	Requirement for establishing and operating transparent and user-friendly mechanisms for users to report or flag content
AT	Obligation to operate a system that allows users to report content, including the information required for an assessment, including an explanatory function for users with information as to the report-handling procedure, all to be done by easily findable, constantly available and easy-to-use options
BE FR	The obligations of the revised AVMSD are established without further specifications
BE NL	The obligations of the revised AVMSD are established without further specifications
BG	Legislation includes the transparent and easy-to-use user's signal mechanisms and stipulates that the media regulatory authorities are to adopt the criteria for assessment of content that is unsuitable or that poses a risk of harm to minors
CY	The obligations of the revised AVMSD are established without further specifications
CZ	The obligations of the revised AVMSD are established without further specifications. Stipulates that a VSP provider is obliged to process a user's report without undue delay and not later than 60 days after receipt of the user's report
DE	The Network Enforcement Act provides for obligations for social networks in dealing with complaints about illegal content, within the limited scope of this law The German Telemedia Act stipulates obligations for VSPs to maintain an electronic report/complaints procedure for users. This law will regulate the procedure for remedying user complaints. Illegal content in this sense is defined as content that is illegal under media law and content that impairs the development of minors, unless the provider meets its obligations to take appropriate protective measures in this respect
DK	The obligations of the revised AVMSD are established without further specifications
EE	The obligations of the revised AVMSD are established without further specifications.



	Requirement for establishing and operating transparent and user-friendly mechanisms for users to report or flag content
ES	The obligations of the revised AVMSD are established without further specifications
FI	The obligations of the revised AVMSD are established without further specifications
FR	Legislation stipulates that the media regulatory authority will specify the details in relation to this
GB	The obligations of the revised AVMSD are established without further specifications
GR	The obligations of the revised AVMSD are established without further specifications
HR	The obligations of the revised AVMSD are established without further specifications
HU	The obligations of the revised AVMSD are established without further specifications, emphasising the effectiveness of mechanisms
IE	Envisaged new Media Commission will have the responsibility in relation to these measures; hence no information available at this point
IT	While the adoption of the relevant legislation is pending, the national regulatory authority's secondary legislation on hate speech obliges VSP providers to submit to it a quarterly report on the monitoring activities carried out in order to detect items of content constituting hate speech, including the description of the operating methods and verification systems
LT	The obligations of the revised AVMSD are established without further specifications
LU	The obligations of the revised AVMSD are established without further specifications
LV	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
MT	The obligations of the revised AVMSD are established without further specifications
NL	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
NO	EEA process pending
PL	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to respond to users immediately, but within no more than 48 hours of the notification, as well as the possibility for the national regulatory authority to determine different aspects of these obligations, by means of a regulation
PT	The obligations of the revised AVMSD are established without further specifications
RO	The obligations of the revised AVMSD are established without further specifications
SE	The obligations of the revised AVMSD are established without further specifications, without including a list of the measures, but the legislative preparatory work clarifies that the appropriate measures shall consist of the measures listed in the AVMSD, as appropriate
SI	The obligations of the revised AVMSD are established without further specifications, including the user's content reporting with obligatory feedback to the user
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire



3.2.4. Measures regarding content which may impair the physical, mental or moral development of minors

The revised AVMSD provides for the obligation on the part of VSP providers to establish and operate an age verification system for their users with respect to content which may impair the physical, mental or moral development of minors (Article 28b (3) (f)) and easy-to-use systems allowing users of VSPs to rate the content (Article 28b (3) (g)). They must also provide 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 (Article 28b (3) (h)).

Similar to the rules applicable for linear and non-linear broadcasting, the regulations in this regard for VSPs in the covered territories revolve around certain measures identified in the AVMSD, including: prohibition of the most harmful content, implementation of technical measures preventing minors from accessing any content which might impair their development, age verification systems, encryption, parental controls and content classification systems/watershed. Also, one of the main measures envisaged is the content rating system, which is seen as an informational tool for users during the content upload. While most legislations use a verbatim transposition of the provisions of the revised AVMSD, in some instances, the legislation indicates that the provision of parental control systems in relation to specially restricted material is an appropriate measure to be taken by a VSP (GB). Some cases refer not only to content that may impair the physical, mental or moral development of minors, but also require measures to safeguard the morality of the services provided to minors and the use, along with the aforementioned techniques, of personal identification codes (EE) or “digital identification instruments” (ES). The legislations also refer to self-regulatory mechanisms in this respect (EE, LV, NL, SI). As seen previously, an active role on the part of the national regulatory authorities is identified in terms of their mandate to specify the rules (FR, IE, PL).

Table 9. Measures regarding content which may impair minors

	Measures regarding content which may impair the development of minors
AT	The obligations of the revised AVMSD are established without further specifications, emphasising the establishment of age verification systems or similar access control measures, including through parental control systems
BE FR	The obligations of the revised AVMSD are established without further specifications
BE NL	The obligations of the revised AVMSD are established without further specifications, stipulating the obligation to provide encrypted access or effective parental controls
BG	The obligations of the revised AVMSD are established without further specifications
CY	The obligations of the revised AVMSD are established without further specifications
CZ	The obligations of the revised AVMSD are established without further specifications
DE	The obligations of the revised AVMSD are established without further specifications stipulating that VSPs may use technical means, inclusive of classification and rating systems, age verification systems or parental controls



Measures regarding content which may impair the development of minors	
DK	The obligations of the revised AVMSD are established without further specifications
EE	Legislation relates to the “protection of minors and ensuring morality and legality in the provision of video-sharing platform services” and provides obligations for VSP providers, if notified of a programme, user-generated video or business message that is detrimental to minors, or is aware of this fact, to add a warning symbol without undue delay, or ensure that the programme, user-generated video or business message is accessible only by means of personal identification codes or other appropriate technical solutions. The legislation also refers to self-regulatory mechanisms in this respect
ES	The obligations of the revised AVMSD are established without further specifications. Legislation refers to “digital identification instruments” to be used by VSP providers for age verification and to facilitate parental control systems
FI	Establishes the obligation of a watershed
FR	Legislation stipulates that the media regulatory authority will specify the details in relation to this, including the specification of measures for content classification, age verification and parental control systems
GB	The obligations of the revised AVMSD are established without further specifications. Indicates that parental control systems are an appropriate measure
GR	The obligations of the revised AVMSD are established without further specifications
HR	The obligations of the revised AVMSD are established without further specifications
HU	The obligations of the revised AVMSD are established without further specifications
IE	The anticipated new Media Commission will have the responsibility in relation to these measures; hence no information available at this point
IT	While the adoption of the relevant legislation is pending, Law Decree 28/2020 stipulates that the agreements for the provision of electronic communication services must include parental controls or filtering measures for inappropriate content and the blocking of content for adults only. Further, secondary legislation establishes rating systems for audiovisual works intended for the web and videogames, and guidelines adopted require operators providing audiovisual media services via the Internet as well as hosting providers to take appropriate technical measures to restrict or prevent the circulation of content in accordance with the categorisation. These measures should include technical identification devices for parental control mechanisms, age verification systems, etc.
LT	The obligations of the revised AVMSD are established without further specifications
LU	The obligations of the revised AVMSD are established without further specifications
LV	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
MT	The obligations of the revised AVMSD are established without further specifications
NL	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
NO	EEA process pending. Currently, youtubers and vloggers must mark videos with age limits when sharing content accessible for wider audience and if receiving income or other benefits.
PL	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the possibility for national regulatory authority to determine different aspects of these obligations, by means of a regulation



Measures regarding content which may impair the development of minors	
PT	The obligations of the revised AVMSD are established without further specifications
RO	The obligations of the revised AVMSD are established without further specifications
SE	The obligations of the revised AVMSD are established without further specifications, without including a list of the measures, but the legislative preparatory work clarifies that the appropriate measures shall consist of the measures listed in the AVMSD, as appropriate
SI	The obligations of the revised AVMSD are established without further specifications
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.2.5. Measures regarding the handling and resolution of users' complaints

VSPs are obliged to establish and operate transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints in relation to the implementation of measures in connection with the obligatory reporting or flagging of content, the systems which are used to explain to users of VSPs what effect has been given to the reporting and flagging, age verification systems, content rating systems and the provision of parental control systems with respect to content which may impair the physical, mental or moral development of minors (Article 28b (3) (i)).

As seen previously, the measures envisaged by the covered territories predominantly reflect the notions stipulated by the AVMSD, without the identified need to further strengthen the obligations. While it is stipulated that the handling of users' complaints and their resolution is in place by default, some cases emphasise the obligation to include the information for the user on all possible out-of-court complaint-resolution mechanisms in the information regarding the VSPs complaint procedures themselves (e.g. Trade Inspection in CZ, Joint body for arbitration of disputes in DE). The manner in which these obligations will be adopted and implemented is left for national regulatory authorities to design (FR and IE), while the regular procedure for raising a complaint to the regulator is emphasised here as well in one case (MT). As seen above, self-regulatory schemes are to include these provisions as well in three cases (LV, NL and SI). In one case (PL), dispute resolution is envisaged using the system of mediation, where the mediator is entered in the relevant list kept by the Chair of the national regulatory authority.

Table 10. Measures regarding the handling and resolution of users' complaints

Measures related to the handling and resolution of users' complaints	
AT	The obligations of the revised AVMSD are established with the obligations for VSPs to ensure access to a complaints procedure about the inadequate implementation of the obligations



Measures related to the handling and resolution of users' complaints	
BE FR	The obligations of the revised AVMSD are established without further specifications
BE NL	The obligations of the revised AVMSD are established without further specifications
BG	The obligations of the revised AVMSD are established without further specifications
CY	The obligations of the revised AVMSD are established without further specifications
CZ	The obligations of the revised AVMSD are established inclusive of the obligation to provide information for platform users on the possibility of resolving disputes using out-of-court or consumer dispute procedures
DE	The Telemedia Act provides obligations for VSPs, including rules on: - how long after removal must unlawful content be stored for evidentiary purposes - how information must be provided to users and complainants or possibilities for a counter-notice. The Media Treaty provides for the establishment of a joint body for the arbitration of disputes The Network Enforcement Act is extended to include an official arbitration board for the out-of-court settlement of disputes
DK	The obligations of the revised AVMSD are established without further specifications
EE	The obligations of the revised AVMSD are established without further specifications
ES	The obligations of the revised AVMSD are established vis-à-vis protection of the general public and minors
FI	No measures specified in the transposition legislation
FR	Legislation stipulates that the media regulatory authority will specify the details in relation to this
GB	The obligations of the revised AVMSD are established without further specifications
GR	The obligations of the revised AVMSD are established without further specifications
HR	The obligations of the revised AVMSD are established without further specifications
HU	The obligations of the revised AVMSD are established, emphasizing the flagging or complaint lodging mechanism options
IE	The anticipated new Media Commission will have the responsibility in relation to these measures; hence no information available at this point
IT	Adoption of relevant legislation pending
LT	The obligations of the revised AVMSD are established without further specifications
LU	The obligations of the revised AVMSD are established without further specifications
LV	The obligations of the revised AVMSD are established, with the stipulation of the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
MT	The obligations of the revised AVMSD are established, by drawing a parallel to the existing provisions (related to the broadcasting activities) regarding the submission of complaints Subsidiary legislation outlines the complaints procedure of the national regulatory authority
NL	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
NO	EEA process pending
PL	Dispute resolution can be done using a mediator, who may be a natural person having full capacity to perform acts in law, enjoying full public rights, having competence in the field



Measures related to the handling and resolution of users' complaints	
	of law and the media, entered in the list of mediators kept by the Chair of the national regulatory authority
PT	The obligations of the revised AVMSD are established without further specifications
RO	The obligations of the revised AVMSD are established without further specifications
SE	The obligations of the revised AVMSD are established without further specifications, without including a list of the measures, but the legislative preparatory work clarifies that the appropriate measures shall consist of the measures listed in the AVMSD, as appropriate
SI	The obligations of the revised AVMSD are established without further specifications. Legislation provides for the national media regulatory authority's assessment of the adequacy of these measures
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

3.2.6. Measures regarding media literacy

Article 28b (3) (j) of the revised AVMSD provides for the obligation for VSPs in terms of providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.

The extension of media literacy activities to encompass those of VSPs is transposed almost verbatim in most cases. An interesting set-up is found in AT, where, in addition to or as an alternative to offering their own media literacy activities, VSPs can provide access to existing platforms with such information, provided by the body established to support the national communications regulatory authority in fulfilling its legal tasks. Also, a number of legislative measures includes the role and mandate of the national regulatory authority or a relevant ministry (MT) relative to media literacy, either autonomously and/or as an auditor of self-regulatory measures taken by the VSPs (AT, FR, IE, FI, LV, NL, SI).

Table 11. Measures regarding media literacy

Measures regarding media literacy	
AT	Platform providers must provide their own offers to increase media literacy or, alternatively, clearly refer to the information provided by the company Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) which has been set up in order to support the national communications regulatory authority KommAustria in fulfilling its legal tasks
BE FR	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates that VSP's are to take measures to educate users about the media
BE NL	The obligations of the revised AVMSD are established without further specifications
BG	The obligations of the revised AVMSD are established without further specifications
CY	The obligations of the revised AVMSD are established without further specifications
CZ	The obligations of the revised AVMSD are established without further specifications



Measures regarding media literacy	
DE	No measures specified in the transposition legislations
DK	The obligations of the revised AVMSD are established without further specifications
EE	No measures specified in the transposition legislation
ES	The obligations of the revised AVMSD are established in relation to protection of both the general public and minors
FI	<p>Legislation introduces an obligation for VSPs to take the necessary measures to ensure that users are clearly informed when programmes or user-generated videos contain audiovisual commercial communications, and also to make reference to self-regulatory codes of conduct.</p> <p>The National Audiovisual Institute may check that the code of conduct complies with the law, while the national media education authority, the National Audiovisual Institute coordinates and promotes many media literacy activities, children's media skills and the development of safe media environment for children in cooperation with other authorities and corporations in the sector</p>
FR	Legislation stipulates that the media regulatory authority will specify the details in relation to this
GB	The obligations of the revised AVMSD are established without further specifications
GR	The obligations of the revised AVMSD are established without further specifications
HR	The obligations of the revised AVMSD are established without further specifications
HU	The obligations of the revised AVMSD are established without further specifications
IE	While the Broadcasting Act 2009 provides for the definition of media literacy and related functions of the national media regulatory authority in this regard, the draft legislation provides that the proposed Media Commission has the functions to promote public awareness, encourage research and conduct public information campaigns for the purpose of educating and providing information to the public in relation to online safety and media literacy
IT	While the adoption of the relevant legislation is pending, regulatory secondary legislation on hate speech states that VSP providers are invited to promote campaigns and initiatives on issues of social inclusion and cohesion, as well as the promotion of diversity and fundamental human rights, with a view to preventing and countering online discrimination
LT	The obligations of the revised AVMSD are established without further specifications
LU	The obligations of the revised AVMSD are established without further specifications
LV	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
MT	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the creation of the Media Literacy Development Board to create a strategy for media literacy skills
NL	The obligations of the revised AVMSD are established, highlighting the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
NO	EEA process pending. Currently, national regulatory authority undertakes activities to increase media literacy by conducting biannual surveys of the citizens critical media understanding
PL	The obligations of the revised AVMSD are established without further specifications



Measures regarding media literacy	
PT	The obligations of the revised AVMSD are established without further specifications
RO	The obligations of the revised AVMSD are established without further specifications
SE	The obligations of the revised AVMSD are established without further specifications, without including a list of the measures, but the legislative preparatory work clarifies that the appropriate measures shall consist of the measures listed in the AVMSD, as appropriate
SI	Legislation does not specifically mention media literacy in the context of obligations for VSPs, but provides general media literacy provisions, in terms of the obligation on the state to support measures intended to promote, encourage and develop media literacy with funds from the budget of the ministry responsible for the media. It further stipulates that the national communications regulatory authority shall make the population of the Republic of Slovenia aware of the competent and responsible use of electronic media by implementing media literacy projects in the areas it regulates within its competences
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD, while users' awareness and media literacy measures are addressed in the National conception of child protection in the digital space and the Action plan for 2020–2021 based on the national concept of child protection in the digital space

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire.

3.2.7. Measures regarding the processing of personal data of minors for commercial purposes

Article 28b (3) of the revised AVMSD forbids the processing of personal data of minors for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, collected or otherwise generated by VSP providers in the course of the fulfilment of obligations related to establishing and operating age verification and parental control systems with respect to content which may impair the physical, mental or moral development of minors.

While most cases require respect for the prohibition against using the personal data of minors for commercial purposes, it is interesting to note that in some cases, this prohibition has already been introduced in other legislative sets (AT, GB, IE). Some requirements are related to verifying the minimum age obligations are applicable too (FI – 13 years of age), while in one case, it is stipulated that data processing may only be undertaken for age verification purposes (SI). As seen before, these measures are to be included in self-regulation and the respective codes of conduct (LV, NL, SI).

Table 12. Measures regarding processing of personal data of minors

Measures regarding processing of personal data of minors	
AT	No information available in the notified transposition measures
BE FR	The obligations of the revised AVMSD are established without further specifications



Measures regarding processing of personal data of minors	
BE NL	The obligations of the revised AVMSD are established without further specifications
BG	The obligations of the revised AVMSD are established without further specifications
CY	The obligations of the revised AVMSD are established without further specifications
CZ	The obligations of the revised AVMSD are established without further specifications
DE	The obligations of the revised AVMSD are established without further specifications
DK	The obligations of the revised AVMSD are established without further specifications
EE	The obligations of the revised AVMSD are established without further specifications
ES	The obligations of the revised AVMSD are established without further specifications
FI	Legislation provides protection mechanisms related to the processing of personal data of minors, and considers them lawful where the child is at least 13 years old, but based on the provision of consent
FR	The obligations of the revised AVMSD are established, inclusive of the obligations which extend even after the age of maturity
GB	Obligations covered by the Data Protection Act 2018, the Age-appropriate Design Code and other guidance from the Information Commissioner's Office
GR	The obligations of the revised AVMSD are established without further specifications
HR	The obligations of the revised AVMSD are established without further specifications
HU	The obligations of the revised AVMSD are established without further specifications
IE	Matters related to the categories of data protection and privacy law are dealt with by other areas of law and existing regulatory bodies, like the Data Protection Commission
IT	While the adoption of the relevant legislation is pending, the Law against cyberbullying stipulates that minors between 14 and 18 years of age as well as the parents of or persons having parental rights over minors who have suffered from acts defined as cyberbullying are entitled to submit a complaint to owners of websites and social media sites to block and remove any personal data circulated over the Internet
LT	The obligations of the revised AVMSD are established without further specifications
LU	The obligations of the revised AVMSD are established without further specifications
LV	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
MT	The obligations of the revised AVMSD are established without further specifications
NL	The obligations of the revised AVMSD are established without further specifications. Legislation stipulates the obligation for VSPs to develop codes of conduct encompassing all of the obligations stemming from the AVMSD
NO	EEA process pending
PL	The obligations of the revised AVMSD are established without further specifications
PT	Establishing the obligations complementary to AVMSD text, for all services, including television programming operators, on-demand audiovisual service operators and VSPs
RO	The obligations of the revised AVMSD are established without further specifications
SE	The obligations of the revised AVMSD are established, stipulating a ban on any commercial purpose
SI	Legislation stipulates that the personal data of minors can only be processed for age verification purposes
SK	It is expected that the wording of the provisions will closely follow the wording of the relevant articles of the AVMSD



Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.2.8. Other relevant provisions

While a separate forthcoming mapping report of the European Audiovisual Observatory will be specifically devoted to commercial communications, the questionnaire nevertheless submitted to experts further questions to explore any other relevant provisions with regards to the protection of minors, including the provisions related to commercial communications which may impair the physical, mental or moral development of minors and/or minors' exposure to advertising for alcohol products and HFSS foods in commercial communications. As stipulated, commercial communications must not:

- cause physical, mental or moral detriment to minors;
- 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.
- In most cases, there are indeed provisions relative to the content and commercial communications, inclusive of advertising for alcohol and HFSS products.

Provisions relative to content that may be detrimental to minors stipulate protective mechanisms, such as watersheds, age verification systems, classification of content, acoustic and visual warning signs and conditional access, which are present in fourteen cases (AT, BE FR, BG, CY, CZ, DK, FI, HR, IE, IT, LU, LV, RO, SI). In some cases (DE, FR), self-regulatory instruments are identified as protective tools in this regard, or a combination of legislative/regulatory obligations for certain aspects, such as warning signals and self-regulatory mechanisms for age verification and filtering (HU). No additional obligations exist in ten cases (BE NL, EE, ES, GB, GR, LT, MT, NO, NL, PT, SE).

As for the rules regarding commercial communications which may impair the physical, mental or moral development of minors, 17 cases are inclusive of restrictions as stipulated by the AVMSD (BE FR, BE NL – already in place since 2007 from the perspective of consumer protection legislation, BG, CY, CZ, DE, DK, EE, FR, GR, HR, IE, IT, LT, NO, PL, PT, RO). Seven cases identify both regulatory obligations and the encouragement of self-regulatory protective mechanisms in this regard (GB, HU, LU, LV, MT, NL, SI), while in three cases, no additional measures are foreseen (EE, ES, FI). In one case, only self-regulation vis-à-vis these matters is identified (AT).

Finally, when it comes to advertising for alcohol products and HFSS foods, self-regulatory mechanisms are identified in the vast majority of cases for HFSS foods, while



the obligatory regulatory measures relate to restrictions vis-à-vis alcohol and tobacco products (CY, CZ, DE, DK, EE, ES – not for HFSS products yet, FI, GB, GR, HR, LT, LU, LV). Self-regulation as the sole protective mechanism is seen in seven cases (AT – where the prerequisite for financial support for self-regulation is the adoption of guidelines on these issues, BG, HU, IT, NL, RO, SI).

The regulatory authority is to draw up related codes of conduct in one case (BE FR), and there is one case where even more detailed standards are found vis-à-vis candy products (BE NL). In one case (FR) there is a full set of rules on HFSS foods and beverages and alcohol which is applicable online, on sites mainly intended for young people, while in another case (IE), the broadcasting-related secondary legislation may include prohibitions regarding particular HFSS. Finally, in one case, applicable rules which include restrictions as stipulated by the AVMSD, with a prohibition against commercial communications for HFSS products around or during children's programmes are also applicable to VSPs, taking into account the limited control exercised by such platforms (MT). Finally, one case shows that the rules inclusive of restrictions related to alcohol and HFSS products around children's programmes are applicable to VSPs as well, with additional age and audience measurement restrictions on all platforms (PT).

3.3. Practicability of the measures imposed on VSPs

According to Article 28b (3) of the AVMS Directive, the measures imposed on VSPs as detailed above should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content. The appropriate measures should 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 VSP providers and the users who have created or uploaded the content as well as the general public interest.

The manner in which this is implemented in the national law is analysed from the perspective of whether the criteria established by the AVMSD have been referred to and/or whether the covered territories introduced any other additional criteria in this respect.

A significant number of cases include the aforementioned criteria as stipulated in the revised AVMSD (BE FR, BE NL, BG, CZ, FI, HU, LU, RO, SI), with some of these offering further criteria, such as possible prejudice and illegal content (BE FR) as well as the scope of a VSP (LT), or stipulating that the provider exercises limited control over communications and any other measures which have been taken or are to be taken (GB). In some instances, it is provided that the national regulatory authority and/or government is to issue further guidance (BE NL, CZ, FR). One case does not include any reference to these criteria in the legislation, but there is a reference in the legislative preparatory documents (SE). There are also situations in which only the threshold based on the number of users to determine the categorization by size of the platform is stipulated under other legislation (DE – Network Enforcement Act). Also, in one case, no criteria are stipulated but the legislation refers to



commercial communications and harmful content applicable to minors as to the nature of the content (MT). No criteria are found in a minority of cases (AT, CY, EE, NO, PT).

The cases which include all or some of the criteria from the revised AVMSD are presented in the following graphical representation, depicting the extent of inclusion of these criteria.

Table 13. Reference to the definition of certain criteria in the covered territories

	Size of the VSP	Nature of the service	Nature of the content	Harm; Protected persons; rights and legitimate interest; General public interest
AT	No	No	No	No
BE FR	Yes	Yes	Yes	Yes
BE NL	Yes	Yes	Yes	Yes
BG	Yes	Yes	Yes	Yes
CY	No	No	No	No
CZ	Yes	Yes	Yes	Yes
DE	No	No	No	No
DK	Yes	Yes	No	No
EE	No	No	No	No
ES	Yes	Yes	Yes	No
FI	Yes	Yes	Yes	Yes
FR	No	No	No	No
GB	Yes	No	Yes	Yes
GR	No	Yes	No	Yes
HR	Yes	Yes	No	Yes
HU	Yes	Yes	Yes	Yes
IE	No	No	No	No
IT	No	No	No	No
LT	No	Yes	Yes	Yes
LU	Yes	Yes	Yes	Yes
LV	No	No	No	No
MT	No	No	No	No
NL	No	No	No	No
NO	No	No	No	No
PL	No	No	No	No
PT	No	No	No	No
RO	Yes	Yes	Yes	Yes
SE	No	No	No	No
SI	Yes	Yes	Yes	Yes
SK	No	No	No	No



3.4. Regulation and enforcement

This part deals with the identification of the authority which is in charge of regulatory and enforcement powers with regards to VSPs and includes, besides the list of these institutions, their role and the scope of their activities in this regard.

3.4.1. Regulatory bodies in charge

The national authority in charge of the regulation of VSPs remains, for the most part, in the hands of public authorities which have been and are entrusted with regulation of audiovisual media services, i.e. national media/communications regulatory agencies and/or relevant government ministries/departments. However, it is clear that in some cases (IE, FR), a shift towards the establishment of new regulatory bodies is envisaged. For example, in Ireland, the member state with jurisdiction over the majority of VSP services offered in Europe, the relevant legislation proposes a comprehensive online safety and media regulation legislative package, which also envisages the dissolution of the existing national regulatory authority (the Broadcasting Authority of Ireland) and the establishment of a Media Commission, which will oversee the regulation of VSPs, including the responsibilities related to measures which must be adopted by VSPs. Similarly, the French pending legislation envisages a merger between the current media regulatory authority, the *Audiovisual Superior Council (Conseil Supérieur de l'Audiovisuel, CSA)* and the High Authority for the dissemination of works and the protection of rights on the Internet (*Haute Autorité pour la Diffusion des Œuvres et la Protection des droits d'auteur sur Internet, HADOPI*) into a new institution Audiovisual and Digital Communication Regulatory Authority (*Autorité de Régulation de la Communication Audiovisuelle et Numérique, ARCOM*).

The spheres of obligations stemming from the revised AVMSD, encompassing areas such as data protection, inevitably require cooperation between different and differing actors, which requires flexibility and adaptability, in light of new challenges. Examples of shared responsibility among several public authorities, all in their respective domains can be seen in some cases (FI and SE), covering the relevant field and including data protection agencies and consumer Ombudsmen.

As seen in the regulatory arrangements relative to linear and non-linear audiovisual media services, some regulatory aspects are within specific regulatory institutions (such as the German Commission for the Protection of Minors in the Media (KJM)).



Table 14. Competent regulatory bodies

	Competent regulatory body
AT	The Austrian Communications Authority (<i>Die Kommunikationsbehörde Austria, Komm Austria</i>) ¹⁷
BE FR	The Superior Audiovisual Council (<i>Conseil supérieur de l'audiovisuel, CSA</i>) ¹⁸
BE NL	The Flemish Regulator for the Media (<i>Vlaamse Regulator voor de Media, VRM</i>) ¹⁹
BG	The Council for Electronic Media (<i>Съвет за електронни медии, CEM</i>) ²⁰
CY	The Radio Television Authority (<i>Αρχή Ραδιοτηλεόρασης Κύπρου, CRTA</i>) ²¹
CZ	The Council for Radio and Television Broadcasting (<i>Rady pro rozhlasové a televizní vysílání, RRTV</i>) ²²
DE	<p>The competent regulatory bodies for VSPs are organised on a state level, most states having a state media authority (LMA), while the states of Hamburg and Schleswig Holstein share one authority, as do the states of Berlin and Brandenburg. The state media authorities form joint commissions for certain tasks</p> <p>In the field of the protection of minors in the media, the Commission for the Protection of Minors (<i>Kommission für Jugendmedienschutz, KJM</i>)²³ is responsible for the final evaluation of broadcasting and telemedia</p> <p>Cooperation takes place between the state media authorities within the framework of their joint institutions. Some cooperation is also planned between federal and state institutions</p>
DK	The Radio and Television Board (<i>Slots- og Kulturstyrelsen, SLKS</i>) ²⁴
EE	The Consumer Protection and Technical Regulatory Authority (<i>Tarbijakaitse ja Tehnilise Järelevalve Amet, ECTRA</i>) ²⁵
ES	<p>The National Authority for Markets and Competition (<i>Comisión Nacional de los Mercados y la Competencia, CNMC</i>)²⁶</p> <p>The Ministry of Economic Affairs and Digital Transformation (<i>Ministerio de Asuntos Económicos y Transformación Digital</i>)²⁷ has competences for keeping of the state registry of audiovisual communication service providers and VSPs</p>
FI	<p>The Finnish Transport and Communications Agency (<i>Liikenne- ja viestintävirasto Traficom</i>)²⁸ is responsible for the supervision of compliance with the Act on Electronic Communications Services</p> <p>The Ministry of Transport and Communications (<i>Liikenne- ja viestintäministeriö</i>)²⁹ is responsible for the overall guidance and development of the activities</p>

¹⁷ https://www.rtr.at/medien/wer_wir_sind/KommAustria.html.

¹⁸ <https://www.csa.be/>.

¹⁹ <http://www.vlaamseregulatormedia.be>.

²⁰ <http://www.cem.bg/>.

²¹ <http://www.crtat.org.cy>

²² <https://www.rrtv.cz/cz/>

²³ <https://www.kjm-online.de/>.

²⁴ <https://slks.dk/omraader/medier/>.

²⁵ <https://www.ttja.ee/et>.

²⁶ <https://www.cnmc.es/>.

²⁷ <https://www.mineco.gob.es/>.

²⁸ <https://www.traficom.fi/en/>.

²⁹ <https://www.lvm.fi/en/home>.



	Competent regulatory body
	<p>The Data Protection Ombudsman supervises personal data protection³⁰</p> <p>The Consumer Ombudsman (<i>Dataombudsman</i>)³¹ supervises compliance with regard to marketing targeted at children, the legality of contractual terms as well as marketing and procedures followed in customer relationships</p> <p>The National Audiovisual Institute (<i>Kansallinen audiovisuaalinen instituutti</i>)³² supervises compliance with the Act on Audiovisual Programmes</p>
FR	<p>The Superior Audiovisual Council (<i>Conseil supérieur de l'audiovisuel, CSA</i>)³³</p> <p>(Draft legislation, in the adoption procedure at the time of writing this report, foresees the merger of the CSA and the High Authority for the dissemination of works and the protection of rights on the Internet (<i>La Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet, HADOPI</i>)³⁴ into a new authority, ARCOM</p>
GB	<p>The Office of Communications (Ofcom)³⁵</p>
GR	<p>The National Council of Radio and Television (<i>Εθνικό Συμβούλιο Ραδιοτηλεόρασης, NCRTV</i>)³⁶</p>
HR	<p>The Electronic Media Council (<i>Vijeće za elektroničke medije, CEM</i>) which manages the Agency for Electronic Media (<i>Agencija za elektroničke medije, AEM</i>)³⁷</p>
HU	<p>The Office of the National Media and Infocommunications Authority (<i>Nemzeti Média- és Hírközlési Hatóság, NMHH</i>)³⁸</p>
IE	<p>Currently no body with regulatory or enforcement powers with regards to VSPs, but the draft legislation (in the adoption procedure at the time of writing this report) provides for the establishment of a Media Commission as a statutory body at which point, the current Broadcasting Authority of Ireland, BAI³⁹ will be dissolved; hence no information available at this point</p>
IT	<p>Adoption of relevant legislation pending, but reasonable to expect it to be the Italian Communications Authority (<i>Autorità per le Garanzie nelle Comunicazioni, AGCOM</i>)⁴⁰</p>
LT	<p>The Radio and Television Commission of Lithuania (<i>Lietuvos radijo ir televizijos komisija LT, RTCL</i>)⁴¹</p>
LU	<p>The Luxembourg Independent Media Authority (<i>Autorité luxembourgeoise indépendante de l'audiovisuel, ALIA</i>)⁴²</p>

³⁰ <https://tietosuoja.fi/en/home>.

³¹ <https://www.kkv.fi/>.

³² <https://kavi.fi/en/national-audiovisual-institute/>.

³³ <https://www.csa.fr/>.

³⁴ <https://www.hadopi.fr/>.

³⁵ <https://www.ofcom.org.uk/home>.

³⁶ <https://www.esr.gr/information/>.

³⁷ <https://www.aem.hr/>.

³⁸ <http://nmhh.hu/>.

³⁹ <https://www.bai.ie/>.

⁴⁰ <https://www.agcom.it>.

⁴¹ <http://www.rtk.lt>.

⁴² <https://www.alia.lu>.



	Competent regulatory body
LV	The National Electronic Mass Media Council (<i>Nacionālā elektronisko plašsaziņas līdzekļu padome</i> , NEPLP) ⁴³
MT	The Malta Broadcasting Authority (BA) ⁴⁴
NL	The Media Authority (<i>Commissariaat voor de Media</i> , CvdM) ⁴⁵
NO	The Norwegian Media Authority (<i>Medietilsynet</i>) ⁴⁶ The Norwegian Consumer Authority (<i>Forbrukertilsynet</i>). ⁴⁷ The Marketing Control Act includes advertising on social media (blogs, Facebook, Instagram, Twitter and Snapchat) where primarily text or photos are used
PL	The National Broadcasting Council (<i>Krajowa Rada Radiofonii i Telewizji</i> , KRRiT) ⁴⁸
PT	The Regulatory Authority for the Media (<i>Entidade Reguladora para a Comunicação</i> , ERC) ⁴⁹
RO	The National Audiovisual Council (<i>Consiliul Național al Audiovizualului</i> , NA) ⁵⁰
SE	The Swedish Press and Broadcasting Authority (<i>Myndigheten för press, radio och tv</i> , MPRT/SPBA) ⁵¹ , the Swedish Consumer Ombudsman (<i>Konsumentverket</i>) ⁵² and the Swedish Authority for Privacy Protection (<i>Integritetsskyddsmyndigheten</i>) ⁵³
SI	The Agency for Communication Networks and Services (<i>Agencija za komunikacijska omrežja in storitve</i> , AKOS) ⁵⁴
SK	The Council for Broadcasting and Retransmission (<i>Rada pre vysielanie a retransmisiu</i> , RVR) ⁵⁵ (possibly under a new name)

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.4.2. Existence of a notification/registration system

In order to be able to assess the appropriateness of the measures taken by VSP providers, member states should, according to Article 28b (5) establish the necessary mechanisms. The AVMSD further stipulates that such assessment is to be entrusted to the national regulatory authorities or bodies. In order to get the measure of how the covered territories have decided to implement these notions, the review of the existence of notification or

⁴³ <https://www.neplpadome.lv/>.

⁴⁴ <http://www.ba-malta.org/>.

⁴⁵ <https://www.cvdM.nl/>.

⁴⁶ <https://www.medietilsynet.no/en/about-medietilsynet/>.

⁴⁷ <https://www.forbrukertilsynet.no>.

⁴⁸ <https://www.gov.pl/web/krrit>.

⁴⁹ <https://www.erc.pt/>.

⁵⁰ <https://www.cna.ro/>.

⁵¹ <https://www.mprt.se/en/>.

⁵² <https://www.konsumentverket.se/>.

⁵³ <https://www.imy.se/other-lang/>.

⁵⁴ <https://www.akos-rs.si/>.

⁵⁵ <http://rvr.sk/>.



registration systems for VSPs is presented, as one of the first steps of the assessment obligations. While a more thorough review of the fulfilment of these obligations is to be seen from the manner in which the covered territories determined the compliance, enforcement and sanctioning powers vis-à-vis regulatory policies for and around VSPs, the notification/registration of these services is also important to note.

In that respect, notification/information-request procedures⁵⁶ are seen in 27 cases (AT, BE FR, BE NL, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK), usually a priori i.e. prior to the start of operations in the country, with a specific deadline attached, including the deadlines for the existing services which operated prior to the adoption of relevant legislations. These cases include situations in which it is stipulated that the relevant national regulatory authority is to keep a list of VSP providers under its jurisdiction. While the majority of cases envisage registration with the relevant regulatory authority, some cases require court registrations in addition to registrations with the regulatory authority (HR), business registries or notaries (EE) or the relevant ministry (LU). All cases include provisions stipulating the establishment of public registries of VSP providers.

As for the notification/registration conditions, 14 legislations do not prescribe the details, which are to be determined by the competent authority (CY, DE, DK, ES, FI, FR, GB, GR, LV, PT, PT, RO, SE, SI). Where determined, the requested data predominantly relates to contact details and legal representation, as well as jurisdictional determinations (AT, BE FR, BE NL, BG, EE, HR, HU, LU, MT, NL), the description of VSP services (BE FR, BE NL, CZ, HU, LU) and the drafting of general conditions of use of the VSPs (BG, CZ – for the services in existence prior to adoption of legislation). Notification, in some instances, includes the obligation on the part of VSPs to provide the national regulatory authority with free and unencrypted access to VSP services for monitoring purposes (LU), while one case determines the obligation on the part of VSPs to publish all the notification data (NL).

Table 15. Existence of a notification/registration system

	Existence of a notification/registration system	Conditions for notification/registration system
AT	Notification no later than 2 months after the commencement of activities	Requested data: contacts, jurisdiction, obligatory annual updating
BE FR	Prior registration	Requested data: contacts, jurisdiction, description of the service and appropriate measures; commencement dates and the terms and conditions for marketing this service. Obligatory prior notification for changes to any elements

⁵⁶ For the purposes of this Mapping, no difference is made between notification and registration procedures, as they don't differ substantially in practice. For a comprehensive overview of licensing procedures in EU member states, see European Audiovisual Observatory, Mapping of licensing systems for audiovisual media services in EU-28, https://search.coe.int/observatory/Pages/result_details.aspx?ObjectId=09000016808d3c6f.



	Existence of a notification/registration system	Conditions for notification/registration system
BE NL	Notification at least 14 days prior to launch of services	Requested data: jurisdiction; description of the service The Flemish Government determines any further information to be provided, as well as the subsequent changes to that information that must be communicated to the national regulatory authority
BG	The national regulatory authority will keep a list of VSPs, while the persons who intend to provide VSP services may request a certificate of notification to be issued to them	Requested data: contacts, Internet address (URL), jurisdiction; draft conditions for the users, estimated date of start of the activity
CY	Persons who intend to provide VSP services must inform the national regulatory authority	
CZ	Notification at least 15 days prior to the provision of services For those that already provide VSP services, obligatory notification to the national regulatory authority within 90 days following the entry in force of the legislation	Requested data (<i>inter alia</i>): jurisdiction, for those already in existence, the description of protection measures
DE	A list will be compiled of all services, with no further details	
DK	Notification obligation established, without further details	
EE	Notification either with the Estonian Register of Economic Activities or a notary	Requested data: contacts, web page, indication of obligatory conditions, reference to the national media regulatory authority as the supervisory authority
ES	Obligatory registry in the audiovisual registry	
FI	Prior registration with the Transport and Communications Agency	
FR	The national regulatory authority will keep a list of VSPs	Criteria will be established by the national regulatory authority
GB	Notification at least 10 working days in advance to the national regulatory authority, VSPs already in operation were required to notify by a set deadline. Any changes must be notified	The national regulatory authority establishes the manner of and information required for notification
GR	The national regulatory authority will keep a list of VSPs	The national regulatory authority can define the criteria
HR	Registration in the court register or other, prescribed by the state. VSPs already in service are required to send notification to the national regulatory	Conditions vis-à-vis the jurisdiction



	Existence of a notification/registration system	Conditions for notification/registration system
	authority within 60 days following the entry in force of the legislation. The national regulatory authority keeps a list of VSPs	
HU	Obligatory notification prior to launch of services to the national regulatory authority, who will keep a list of VSPs Obligatory notification of changes within 15 days	Requested data: contacts, jurisdiction, description of the service, website address (URL address), planned dates of service provision
IE	Legislation stipulates that these matters will be a subject to rules of the envisaged Media Commission, which will also allow for the Media Commission's designation of relevant online services. It also stipulates that VSPs shall be a category of designated online services	The proposed Media Commission will have the responsibility in this respect; hence no information available at this point
IT	Adoption of relevant legislation pending	
LT	The national regulatory authority is to establish the procedure for registration	
LU	Notification at least 20 days in advance to the relevant ministry in charge of media which keeps a list of service providers	Requested data: identification data, jurisdiction, description of the service to be provided; planned starting date of the activities By notifying, the VSP gives the national regulatory authority free and unencrypted access to its service and provides it with any information required for monitoring purposes
LV	The national regulatory authority maintains a list of VSPs	
MT	Notification is to be done by means of a letter addressed to the Chair of the national regulatory authority	Requested data: contacts and registration data
NL	The national regulatory authority maintains a list of VSPs	VSPs obliged to publish the requested data: contacts, jurisdiction, with the national regulatory authority as designated supervisor
NO	EEA process pending	
PL	The national regulatory authority will determine the requirements	
PT	The national regulatory authority maintains a list of VSPs	
RO	The national regulatory authority maintains a list of VSPs	
SE	The Swedish Broadcasting Commission maintains a list of all services	
SI	Obligatory notification to the national regulatory authority 14-day prior notification is required in the event of changes to services	
SK	A registration and notification system will be introduced in the new legislation	



Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaires

3.4.3. Compliance, enforcement and sanctioning powers

In order to be able to properly implement the obligations provided for VSP services, the issues of compliance, enforcement and sanctioning powers are next assessed. As stipulated in Article 28b (5) of the revised AVMSD, member states are to establish the necessary mechanisms for relevant regulatory authorities, or other public institutions entrusted with the regulation of VSPs' obligations, to assess the appropriateness of the measures taken by VSP providers. It is noted that this provision is incorporated in the national legislations verbatim. The manner in which the assessment is to be done is not possible to evaluate at this point, as a lot of “hands-on” regulatory mechanisms are foreseen by secondary legislative acts, to be adopted by regulators. This is where more concrete regulatory responses to the basic tier of obligations stemming from the AVMSD will be seen, but, as these are to follow the legislative adoption procedure, it is impossible to offer much guidance or any conclusions at this point.

However, some legislative mechanisms do provide an insight into the execution of assessment powers, emphasising the prohibition against making an a priori assessment of the content, as well as suitability and proportionality principles (AT).

Reliance on self-regulatory codes of conduct in this regard is clearly identified in some cases (e.g. DE, except in cases of serious violations of the rules on illegal content), or in the case in which the role of the national regulatory authority extends to monitoring of the establishment, content and application of self-regulatory mechanisms (NL). A very good example of co-regulation vis-à-vis VSPs (as is also the case with audiovisual media services) is found in the UK's approach, where a self-regulatory body should be established by the industry, but, if none is formed, the regulator can designate a regulatory authority for VSPs or serve as the regulatory authority. The national regulatory authority also facilitates the development of VSP codes of conduct, in addition to regulatory enforcement powers.

Where already stipulated, the enforcement of regulatory powers over VSPs is envisaged in three consecutive steps (BE FR, CY, CZ, DE, DK, GB, GR, HR, HU, LU, LV, MT, RO, SE):

- assessment of measures taken by VSPs;
- request for adaptation of measures, if found inappropriate;
- sanctioning, in case of compliance failure.

Of these, sanctioning powers in general relate to financial fines, but there are cases in which other sanctions can also be imposed (DE – prohibition, blocking, withdrawal and revocation; HU – suspension of service, removal of non-compliant service providers from the register, prohibition of the unlawful conduct; RO – request to remove illegal content or restrict access to it or explicitly display a warning, require a hosting service provider to remove, disable or restrict access to a VSP, require registry operators to remove the domain name).



Law enforcement agencies are identified in one case, allowing for the pressing of charges for suspected criminal activities (DK).

Data protection obligations are assumed by default to be entrusted to data protection authorities, as well as ombudsman's offices for consumer protection related matters (DK, SE).

Table 16. Existence of compliance, enforcement and sanctioning powers

	Compliance and enforcement powers	Sanctioning powers
AT	The regulatory authority can initiate <i>ex officio</i> procedure to review the appropriateness of the measures	When determining the financial sanction, the following must be taken into account: <ul style="list-style-type: none"> • the gravity and duration of the violation • the financial strength (e.g. turnover) • profits made • previous violations
BE FR	<ul style="list-style-type: none"> • The national regulatory authority assesses the appropriateness of obligatory measures taken by VSPs • If found inappropriate, VSP invited to correct the deficiencies within a set time 	Sanctions can be imposed, relative to obligations around the protection of minors and advertising
BE NL	Relevant rules not yet adopted (at the time of writing this report), but enforcement and sanctioning powers for VSPs envisaged	
BG	Legislation envisages the national regulatory authority's responsibilities over VSPs' observance of the legal obligations, without further details	
CY	The national regulatory authority may assess the measures taken by VSPs	The national regulatory authority has the power to monitor implementation and impose administrative sanctions, to be prescribed by secondary legislation
CZ	<ul style="list-style-type: none"> • The national regulatory authority can assess the measures taken by VSPs and request corrective mechanisms if measures are insufficient • Another checking mechanism is a prior notification obligation (15 days) of any 	The national regulatory authority can impose financial fines



	Compliance and enforcement powers	Sanctioning powers
	<p>changes to protection measures</p> <ul style="list-style-type: none"> In case of “serious insufficiencies” in the measures, a request for remedy within a reasonable deadline can be sent 	
DE	<ul style="list-style-type: none"> In the field of the protection of minors, the KJM shall take the necessary measures, first assessing self- and co-regulation, except in cases of serious violations 	<p>Measures of the respective state media authority in cases of violations are:</p> <ul style="list-style-type: none"> complaint, prohibition, blocking, withdrawal and revocation <p>Certain youth protection offences can constitute an administrative offence, which can be punished with a fine</p>
DK	<ul style="list-style-type: none"> The national regulatory authority can decide on the appropriateness of measures taken by VSPs The Data Protection Agency supervises compliance with the rules on the protection of personal data, providing guidance, dealing with complaints and making inspections The Intelligence and Security Centre under the Danish Police has a special Cyber Centre that specifically addresses intelligence and investigation tasks relating to cyber threats affecting national security The Consumer Ombudsman monitors whether businesses are complying with marketing practices 	<ul style="list-style-type: none"> The national regulatory authority can prosecute violations The police have the right and obligation to press charges for suspected criminal acts
EE	<ul style="list-style-type: none"> The national regulatory authority’s mandate is to be extended to supervision of compliance with legal obligations The law enforcement agency may apply specific measures of state supervision for specific issues 	



	Compliance and enforcement powers	Sanctioning powers
ES	The national regulatory authority will control compliance by VSP providers	
FI	The national regulatory authority can assess the measures taken by VPS	
FR	<ul style="list-style-type: none"> The national regulatory authority has to ensure that VSPs take all appropriate measures, annually report on them and the number of codes of conduct adopted by them The national regulatory authority must inform the data protection authority when it receives a request from a VSP user about personal data, and can request advice from this institution 	Regulation awaited
GB	<p>The national regulatory authority is to:</p> <ul style="list-style-type: none"> monitor the measures taken by VSPs recognise a self-regulatory authority designate a VSP regulatory authority serve as the regulatory authority if a self-regulatory body is not formed facilitate the development of VSP codes of conduct in commercial communications in and around videos likely to appeal to children enforce the notification requirement for VSPs 	The national regulatory authority can issue notices and fines
GR	<ul style="list-style-type: none"> The national regulatory authority has monitoring assessment powers The specific obligation of VSPs in terms of the implementation of the 	<p>If sanctions are to be issued, the following must be taken into consideration:</p> <ul style="list-style-type: none"> the gravity of the violation the degree of fault the financial situation of the provider repeated violations



	Compliance and enforcement powers	Sanctioning powers
	measures will be determined by a relevant minister, after consulting regulatory authorities	
HR	The national regulatory authority will assess the measures taken by VSPs	The national regulatory authority can issue financial fines for a series of offences
HU	The national regulatory authority periodically analyses, assesses and evaluates the adequacy and effectiveness of the measures taken by VSPs	The national regulatory authority can issue financial fines, suspend services, remove non-compliant service providers from the register, prohibit unlawful conduct, and impose obligations for the enforcement, taking into account: <ul style="list-style-type: none"> • the nature and gravity and its re-occurrence, continuity, duration • the financial advantage gained • the harm caused • the number of persons aggrieved or jeopardised • the damage caused • the violation of personality rights • the impact of the infringement on the market • repeated infringement (within 1 year)
IE	Subject to rules of the proposed Media Commission, inclusive of compliance and warning notices for designated services	
IT	Adoption of relevant legislation pending	
LT	National regulatory authority collects relevant information on VSPs and analyzes their activities, as well as prepares information and methodological material on these issues	
LU	The national regulatory authority is to monitor and evaluate the appropriateness of the measures taken by VSPs	The national regulatory authority can issue these sanctions: <ul style="list-style-type: none"> • a reprimand • a reprimand with the duty to read an announcement • a fine of 250 to 25.000 euros (doubled if the offence is repeated within 6 months)
LV	The national regulatory authority has the same powers for all audiovisual media services and VSPs	The national regulatory authority can issue the same set of sanctions for all audiovisual media services and VSPs
MT	The national regulatory authority will assess the appropriateness of measures taken by VSP measures and has the right to issue related directives	



	Compliance and enforcement powers	Sanctioning powers
NL	The national regulatory authority will monitor the establishment, content and application of the codes of conduct	It is deemed that the current system of self-regulation and enforcement is sufficiently effective, hence, no extension of the enforcement powers of the regulator
NO	EEA process pending	
PL	Where violations occur, the President of the national regulatory authority shall issue a fine, up to 20 times the average monthly remuneration in the enterprises sector	
PT	Regulations and arbitrations are subject to the national regulatory authority's approval, unless the VSP provider adheres to an existing arbitration centre	
RO	The national regulatory authority will assess the appropriateness of measures taken by VSPs	<p>The national regulatory authority can issue sanctions:</p> <ul style="list-style-type: none"> - request the removal of illegal content or restrict access to it or explicitly display a warning; - require a hosting service provider to remove, disable or restrict access to a VSP; - require registry operators to remove the domain name <p>The national regulatory authority may request the National Institute for Research and Development in Informatics (for domains and subdomains in the area .ro), the transmission of data or information that may lead to the identification of persons providing an audiovisual media service, VSP or which uploads and generates video material on a VSP</p>
SE	<ul style="list-style-type: none"> • The Swedish Broadcasting Commission may decide on orders necessary to ensure that the VSP complies with the provisions on appropriate measures • VSPs have a reporting obligation for the purpose of supervision of its services, inclusive of issues relative to product placement, 	<ul style="list-style-type: none"> • The orders of the Swedish Broadcasting Commission may be accompanied by fines. • Failure to comply with the provisions and conditions vis-à-vis advertising may result in the imposition of a special fee



	Compliance and enforcement powers	Sanctioning powers
	sponsorship and advertising • The Consumer Ombudsman exercises supervision with regard to the provisions on advertising and children, as well as medical treatments	
SI	The national regulatory authority will assess the appropriateness of measures take by VSPs	Sanctions will be determined by the regulator's secondary legislation
SK	New legislation will assign the role to the national regulatory authority in this respect	

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.4.4. Development of self- or co-regulatory codes or schemes

The development of self- and/or co-regulatory mechanisms is not a novelty, as they were already introduced in the 2010 AVMSD to reflect the ongoing technological and market developments. Article 4 (7) provided that:

member states shall encourage co-regulation and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the member states concerned and provide for effective enforcement.

During the 2018 revision of the AVMSD, European lawmakers took a step forward in favour of stakeholders, and particularly service providers, being more involved in the regulatory process through self- and co-regulation. According to Article 4a (1) of the revised AVMSD, member states:

shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this directive to the extent permitted by their legal systems.

Codes of conduct are specifically encouraged for the protection of minors against exposure to advertising for alcoholic beverages, foods and beverages that are high in salt, sugars, fat, saturated fats or trans-fatty acids, and gambling.



Notwithstanding the revised AVMSD's general support for self- and co-regulation, according to Article 4a (3), member states are free to require media service providers under their jurisdiction to comply with more detailed or stricter rules, "including where their national independent regulatory authorities or bodies conclude that any code of conduct or parts thereof have proven not to be sufficiently effective". The last note takes special account of the ultimate responsibility of the state for the protection of legal interests such as the protection of minors.

As stipulated by Article 28b, the use of self-regulatory measures in the aforementioned areas is applicable to VSPs, as well.

From the transposition legislations, it is clear that the covered territories are indeed greatly emphasising the self- and co-regulatory mechanisms. Some envisage incorporating VSPs under the umbrella of already existing self-regulatory structures (BE FR – advertising,), while others are just introducing these measures (BE FR co-regulation). In some instances, a specific co-regulatory scheme is afforded legally prescribed financial support by the national regulatory authority, hence ensuring its proper development and functioning (AT).

It should be noted that some of the self-regulatory bodies presented in the adjacent table are those that have already been in existence in the covered territories, for information purposes.

Table 17. Development of self- or co-regulatory codes or schemes

	Development of self- or co-regulatory codes or schemes	Self- and co-regulatory bodies
AT	KommAustria is given EUR 75.000 annually to support self-monitoring efforts vis-à-vis classification of content and commercial communications	A self-regulatory body is to provide codes of conduct and impose sanctions which will include: <ul style="list-style-type: none"> • the publication of its decision • the publication of its recommendation for future behaviour • the withdrawal of a seal of approval or a positive rating This body must report to the regulatory authority every four years
BE FR	Matters related to illegal content, the protection of minors and advertising can be established in self-regulatory codes or be subject to the regulator's rules	
BE NL	The national legal framework already includes self-regulatory measures for commercial communications which also apply to VSPs and users of VSPs	
BG	Self- and co-regulation is to be encouraged through codes of conduct and standards, where suitable and appropriate, inclusive of: <ul style="list-style-type: none"> • journalistic code of ethics • sound levels in advertising • ethical rules for commercial communication 	Existing self-regulatory bodies: <ul style="list-style-type: none"> • National Council for Journalistic Ethics Foundation • National Council for Self-Regulation The national regulatory authority will further adopt rules for co-regulation,



	Development of self- or co-regulatory codes or schemes	Self- and co-regulatory bodies
		and it can, if it deems that there is evidence of the ineffectiveness of codes of conduct, require services to comply with the relevant rules
CY	The national regulatory authority will encourage the development of self- or co-regulatory codes for VSPs	Existing self-regulatory bodies: <ul style="list-style-type: none"> • Union of Cyprus Journalists • Cyprus Advertisers Association
CZ	The national regulatory authority: <ul style="list-style-type: none"> • helps develop self-regulation • publishes on its website the list of self-regulatory bodies • At the request of self-regulatory bodies, it issues statements and recommendations for internal regulations of self-regulatory bodies, in particular in the field of the protection of minors 	New self-regulatory organisation(s) will be established and the national regulatory authority will support them and cooperate with them
DE	Possibility of establishment of voluntary self-regulatory bodies in the field of the protection of minors, to be certified by the KJM, which also monitors these institutions of self- and co-regulation	Existing self-regulatory bodies: <ul style="list-style-type: none"> • German Press Council • German Advertising Standards Council • Film Industry's Voluntary Self-Regulation Scheme • Entertainment Software Rating Board • Television Industry's Voluntary Self-Regulation Scheme • Voluntary Self-Regulation of Multimedia Providers Scheme, recognised under the Youth Protection Act and responsible for telemedia providers, including VSPs
DK	No direct references to self- and co-regulatory schemes	The Minister of Culture has appointed the Media Council for Children and Young People to guide on the suitability of films, programmes, etc. for children and young people, and provide information and advice on the digital education of children and young people Existing self-regulatory bodies: <ul style="list-style-type: none"> • Safer Internet Centre Denmark (SIC DK) • Awareness centre (MCDK)
EE	<ul style="list-style-type: none"> • Self-regulatory mechanisms envisaged 	Existing self-regulatory bodies: <ul style="list-style-type: none"> • Estonian Broadcasters' Union



	Development of self- or co-regulatory codes or schemes	Self- and co-regulatory bodies
	<ul style="list-style-type: none"> The establishment, by the relevant minister, of a code of conduct for the transmission of commercial communications in children's programmes, if VSPs have not developed it 	<ul style="list-style-type: none"> Estonian Media Alliance
ES	Self- and co-regulatory mechanisms foreseen	<p>Existing self-regulatory bodies:</p> <ul style="list-style-type: none"> Confianza Online, whose ethical code covers the protection of personal data, e-commerce with consumers, digital advertising and the protection of minors and adolescents Trust mark (label) system Online claims resolution system, including the AUTOCONTROL Advertising Jury, for claims related to commercial communications, privacy, data protection and the protection of minors National Consumer Arbitration Council PAOS Code, a co-regulatory instrument regarding the advertising of food and beverages to minors
FI	<ul style="list-style-type: none"> The national regulatory authority is to foster self- and co-regulation, as well as cooperation among authorities The National Audiovisual Institute may check that the code of conduct complies with the legislation 	
FR	The national regulatory authority will have to foster the elaboration of self-regulatory instruments	<ul style="list-style-type: none"> Besides the existing self-regulatory instruments, three codes of conduct are currently planned in relation to VSPs, fostered by the national regulatory authority: Code of good administrative behaviour Codes of conduct for VSPs, which have to relate to all relevant obligations Codes of conduct about reducing the exposure of children to commercial communications for HFSS products There is a proposal for VSPs to develop charters in order to



	Development of self- or co-regulatory codes or schemes	Self- and co-regulatory bodies
		intensify the fight against illegal commercial exploitation of images of children under the age of 16, pending adoption
GB	<p>The national regulatory authority:</p> <ul style="list-style-type: none"> will recognise a self-regulatory authority should one be established facilitates the development of VSP codes of conduct on food and beverages in commercial communications in and around videos likely to appeal to children 	<ul style="list-style-type: none"> Besides other existing self-regulatory instruments, the Advertising Standards Authority (ASA), since 2004, has had a co-regulatory agreement with the national regulatory authority for broadcast advertising and a similar arrangement from 2009 for video on demand (VOD) services. Since 2010 the ASA has also covered online advertising <p>The national regulatory authority:</p> <ul style="list-style-type: none"> serves as the backstop to the self-regulatory body for advertising for broadcast and VOD advertising consults with industry to maintain content and consumer panels provides information and advice to the Secretary of State
GR	The national regulatory authority is to foster self- and co-regulation	Not yet established for VSPs
HR	The national regulatory authority is to foster self- and co-regulation	Not yet established for VSPs, except for the code of conduct for advertising and marketing communications of the Croatian Association of Communications Agencies (HURA), which takes into consideration the content of VSPs
HU	<p>The national regulatory authority is to:</p> <ul style="list-style-type: none"> foster self- and co-regulation conclude administrative agreements with self-regulatory bodies authorise the work of self-regulatory bodies retain its powers irrespective of the aforementioned authorisation 	<p>The national regulatory authority has administrative agreements with:</p> <ul style="list-style-type: none"> Association of Hungarian Content Providers Association of Hungarian Electronic Media Service Providers Hungarian Publishers' Association Hungarian Advertising Standard Alliance
IE	<p>The national regulatory authority:</p> <ul style="list-style-type: none"> has a statutory responsibility for the approval of codes for on-demand self-regulation 	<p>Besides existing self-regulatory instruments, existing co-regulatory schemes are:</p> <ul style="list-style-type: none"> On-Demand Audiovisual Services Group (ODAS) for on-demand



	Development of self- or co-regulatory codes or schemes	Self- and co-regulatory bodies
	<ul style="list-style-type: none"> is an appeals mechanism in respect of the protection of minors and community standards <p>The proposed Media Commission may enter into cooperation agreements with other bodies as it sees fit</p>	<p>services under the auspices of the Irish Business and Employers Confederation (IBEC), comprising:</p> <ul style="list-style-type: none"> Advertisers Association of Ireland Institute of Advertising Practitioners in Ireland Advertising Standards Authority for Ireland Representative group of broadcasters, telcos and other service providers
IT	While the adoption of relevant legislation is pending, the existing self-regulatory code on “Media and minors” from 2002 establishes in detail rules of conduct for broadcasters with a view to ensuring a high level of protection of minors	
LT	<ul style="list-style-type: none"> The law provides the main requirements for codes of conduct, which VSPs can develop by themselves It is obligatory for each service provider to choose and publish what kind of code of conduct is applied 	<p>Existing self- and co-regulatory bodies:</p> <ul style="list-style-type: none"> Public Information Ethics Association – Public Information Code of Ethics
LU	The national regulatory authority is to foster self- and co-regulation	
LV	Obligatory self-regulatory mechanisms for VSPs envisaged	
MT	The national regulatory authority is to foster self- and co-regulation	
NL	<ul style="list-style-type: none"> Obligatory self-regulatory mechanisms for VSPs envisaged Obligation for VSPs to be affiliated with the Advertising Code Authority and to be able to prove this by means of a written declaration from the Advertising Code Authority, supervised by the national regulatory authority 	<p>Existing self- and co-regulatory bodies:</p> <ul style="list-style-type: none"> Advertising Code Committee NICAM (classification)
NO	In 2020, the Professional Committee for Influence Marketing was established, with the intention to contribute to responsible practices for those who practice influencer marketing	
PL	Self- or co-regulatory codes might be agreed after completing the process of AVMSD transposition	
PT	No self-regulatory or co-regulatory guidelines in regards to VSPs yet	<p>Existing self-regulatory bodies:</p> <ul style="list-style-type: none"> Code of Ethics for Journalists Several self-regulatory mechanisms for commercial communications (i.e. signalling codes, sponsorships and product placement) Declaration of principles from the Portuguese media in relation to



	Development of self- or co-regulatory codes or schemes	Self- and co-regulatory bodies
		judicial processes and journalistic coverage
RO	The national regulatory authority is to encourage self- and co-regulation	
SE	The national regulatory authority has a general obligation to cooperate with other relevant authorities and to participate in co-regulation concerning requirements for “appropriate measures” for VSPs	
SI	Obligatory self-regulatory mechanisms for VSPs envisaged	Not yet established for VSPs, but the existing self-regulatory instrument is: <ul style="list-style-type: none"> • Slovenian Advertising Chamber (covering a range of issues, including the protection of minors, etc.)
SK	New legislation will address the question of developing self- or co-regulatory codes for VSPs, while the national regulatory authority will be an active part of co-regulatory schemes	

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.4.5. Out-of-court redress mechanisms for users

Article 28b (7) of the AVMSD prescribes out-of-court redress mechanisms for the settlement of disputes between users and VSP providers relating to the application of measures taken by VSPs.

In nine cases, the settlement of disputes is entrusted to national regulatory authorities (BE FR, DE, DK, FI, FR, GB, MT, SE, SI). Existing arbitration/mediation/consumer resolution mechanisms are described in seven cases (AT, BG, CZ, DE, GR, NL and PT), while four legislations provide for these mechanisms, but the detailed implementation has not yet commenced (CY, HU, IE, LU). In one case (EE), the out-of-court settlement mandate is jointly entrusted to the relevant consumer committee and the Director General of the national regulatory authority. In one case (PL), mediation is envisaged for these matters.

Table 18. Existence of out-of-court redress mechanisms

	Existence of out-of-court redress mechanisms
AT	Arbitration Board
BE FR	National regulatory authority
BE NL	None
BG	Mediation Act (rarely used)
CY	Envisaged, not established yet
CZ	Envisaged for the Czech Trade Inspection pursuant to the Consumer Protection Act
DE	Envisaged that the regulatory authorities should set up a joint body for the settlement of disputes



	Existence of out-of-court redress mechanisms
DK	National regulatory authority
EE	Consumer Disputes Committee and Director General of the national regulatory authority
ES	None
FI	National regulatory authority
FR	National regulatory authority
GB	The national regulatory authority has established a dispute resolution procedure and provided detailed guidance on it
GR	Law on Mediation also available for the settlement of disputes between users and VSPs
HR	None
HU	Envisaged, not established yet
IE	Will be addressed in the future
IT	Adoption of relevant legislation pending, while these mechanisms are in place vis-à-vis audiovisual media services
LT	National regulatory authority
LU	Grand-ducal regulation will determine the rules of procedures
LV	None
MT	National regulatory authority
NL	Several current out-of-court mechanisms available, e.g.: Dispute committee under the Foundation for Consumer Complaints Boards
NO	EEA process pending
PL	Mediation system envisaged
PT	System of arbitral courts already in existence referred to in case of VSPs, as well
RO	None
SE	Swedish Broadcasting Commission
SI	National regulatory authority
SK	The new legislation will establish the relevant mechanisms

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.4.6. Rights of users before a court

Ensuring users' rights before a court in relation to obligatory measures for VSP providers is another prerequisite stemming from Article 28b (8). While in the vast majority of cases (20) regular court procedures are available for users, hence no specific provisions in this regard were deemed necessary (AT, BE FR, BE NL, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, LU, LV, NL, PL, RO, SE), in six cases, specific references to possible court procedures are included in the relevant legislations (BG, CY, CZ, MT, PT and SI).



Table 19. Rights of users before a court

	Rights of users before a court
AT	No specific provisions, use of regular court procedures
BE FR	No specific provisions, use of regular court procedures
BE NL	No specific provisions, use of regular court procedures
BG	Specific reference to court procedures
CY	Specific reference to court procedures
CZ	Specific reference to court procedures
DE	No specific provisions, use of regular court procedures
DK	No specific provisions, use of regular court procedures
EE	No specific provisions, use of regular court procedures
ES	No specific provisions, use of regular court procedures
FI	No specific provisions, use of regular court procedures
FR	No specific provisions, use of regular court procedures
GB	No specific provisions, use of regular court procedures
GR	No specific provisions, use of regular court procedures
HR	No specific provisions, use of regular court procedures
HU	No specific provisions, use of regular court procedures
IE	No specific provisions, use of regular court procedures
IT	No specific provisions, use of regular court procedures
LT	Specific reference to court procedures in 2021 amendment to the Code of Administrative Offences
LU	No specific provisions, use of regular court procedures
LV	No specific provisions, use of regular court procedures
MT	Specific reference to court procedures
NL	No specific provisions, use of regular court procedures
NO	EEA process pending
PL	No specific provisions, use of regular court procedures
PT	Specific reference to court procedures
RO	No specific provisions, use of regular court procedures
SE	No specific provisions, use of regular court procedures
SI	Specific reference to court procedures
SK	Legislation process is pending

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

3.4.7. The stakeholders' perspective

In addition to the analysis based on the input from the pool of national experts, the Observatory also approached a selection of industry stakeholders to ascertain their views on the new obligations for VSPs, particularly focusing on the measures aimed at protecting the general public from illegal content and content that incites violence or hatred, the



protection of minors, awareness raising and media literacy, as well as enhanced cooperation between the relevant authorities.

When it comes to the main challenges that VSPs will face when adapting to the new rules of the AVMS Directive, Dailymotion held that the new provisions are unclear and vague; moreover, in their view, they do not embrace the full diversity of VSPs and tend to associate VSPs with social networks. This lack of clarity would accentuate competition distortions between global and local players which don't necessarily have the same business model and the same financial resources. This respondent felt that the main challenge for them is that the AVMSD provisions will be disconnected from their business model, which is a software as a service (SaaS)⁵⁷ model rather than a user-generated content service model.

The interactive livestreaming service Twitch, which hosts real-time content, indicated that some of the new rules can prove challenging to implement as user-generated-content services differ widely in the way they function and operate. Companies therefore need sufficient flexibility to allow them to adopt whichever solutions will have the biggest impact on their service.

In the same vein, Facebook highlighted the fact that, for many providers, video-sharing is only one aspect of a broad and inclusive multimedia platform. While the European Commission has issued guidance on the interpretation of the VSP definition, in particular on the “essential functionality” criterion, Facebook believed it is still unclear whether and how multipurpose online platforms will be considered as VSPs under the new AVMSD. In their view, a homogenous one-size-fits-all approach is not a viable solution; therefore it would be essential for regulators to take due consideration of the provisions in Article 28b (3) of the AVMSD which specify that “the appropriate measures [on VSPs] shall be determined in light of the nature of the content in question, the harm it may cause [and] the category of persons to be protected”. In other words, it was of the opinion that the implementation should be mindful of the practical difficulties that platforms face when implementing measures to comply with different applicable laws, especially if these would affect the user experience – for instance, by being overly prescriptive in how safety measures should be designed, being disruptive to business models or the ability to innovate and create new products for users.

Snapchat does not consider itself a VSP as defined in the AVMS Directive, since its core functionality is visual, private messaging – either one-to-one or in small groups. Nevertheless, it indicated that they are engaging on a constructive basis with regulators in different countries in Europe as they transpose the directive. One of the key issues for them was also proportionality: acknowledging that there is a significant variety in the size, resources and service models of platforms which may find themselves within the scope of new requirements, some companies will have well-established systems, tools and teams to prevent harmful content and activity from being served to their users, while others may be at a much earlier stage in their development. In order to avoid penalising smaller platforms, regulators should not, in their view, seek to impose prescriptive and granular requirements

⁵⁷ SaaS, also known as on-demand software, is a software delivery model where the user does not need to download the software, as this can be accessed over the Internet.



on VSPs, or require a one-size-fits-all solution to problems that will vary significantly from platform to platform, by deploying specific processes, technologies or tools. In addition, they understood that when it comes to the Country of Origin principle (COO), VSPs should only fall under the jurisdiction of the member state where they are headquartered. In their view, it is important that European regulators agree amongst themselves how this system will work in terms of VSP oversight to protect this critical principle from any derogation.

When it comes to age verification, robust technological solutions do not currently exist. Online age verification of minors is complex and there are several legal and technical challenges that are unresolved. As an example, age verification would require the collection and retention of documents such as copies of passports or driving licences, which can be sensitive. In such complex areas, Snapchat believed that regulators should work together with companies and wider stakeholders to help develop global solutions, rather than seeking only to go after non-compliance. Lastly, as a general rule, reviewing systems, as well as the first assessment of complaints are usually handled by machines, which leaves some room for improvement as the technology behind these systems improves over time.

3.4.7.1. Measures to protect the general public from illegal content and content that incites violence or hatred

The new AVMS Directive provides for obligations on VSPs to put in place measures to protect the general public from illegal content and content that incites violence or hatred. In particular, Article 28b (3) envisages several measures such as adapting terms and conditions to include obligations, reporting or flagging mechanisms, guidance for uploaders and users about reporting or flagging mechanisms, systems allowing users to rate content and procedures for complaint resolution mechanisms. The European Audiovisual Observatory asked the stakeholders about measures put in place prior to the revised directive and the issues they had experienced. Furthermore, we enquired about the plans to put in place such measures and the obstacles they foresaw.

3.4.7.1.1. Adapting terms and conditions to include obligations

With regard to **adapting terms and conditions to include obligations (Article 28b (3) (a))**, Dailymotion indicated that the main issue experienced involved dealing with national differences regarding harmful and illegal content. In the same vein, Facebook explained that they have developed global standards which apply to everyone all around the world and to all types of content. Their Community Standards⁵⁸ prohibit a significant amount of content that may affect minors, as well as hate speech and illegal content. These are constantly revised based on feedback from their community and the advice of external experts in fields such as technology, public safety and human rights. This consultative model aims at ensuring that external voices are heard.

⁵⁸ <https://www.facebook.com/communitystandards/>



In their view, reflecting the legal wording of different and potentially overlapping national legal systems in their Community Standards could present an obstacle, as it could inhibit the development and innovation of global services and reduce the necessary flexibility that platforms require to adapt their set of policies to emerging challenges. The overlap with initiatives to regulate online content in different jurisdictions introduces regulatory uncertainty and the risk that the same service has to comply with competing/inconsistent requirements.

Moreover, TikTok has terms of service which apply to all EEA countries and which currently state that users may not: “intimidate or harass another, or promote sexually explicit material, violence or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age” or “use the services to either intentionally, recklessly or negligently upload, transmit, distribute, store or otherwise make available”, among other things, any material which infringes the law or someone else’s rights, including privacy or personality rights; any defamatory material; any material which provides instructions on how to commit a criminal offence or which discriminates on the basis of someone’s race, religion, age, gender, disability or sexuality.⁵⁹

Twitch’s Terms of Service and Community Guidelines already cover a wide range of the obligations introduced by the Directive; for instance, they address, among other things, breaking the law; self-destructive behaviour; violence and threats – from physical threats to hacking, DDOS (Distributed Denial of Service) or swatting threats; hateful conduct and harassment; unauthorised sharing of private information; impersonation; spamming and scamming; nudity, pornography, and other sexual content; extreme violence, gore, and other obscene conduct; as well as IP rights.⁶⁰

3.4.7.1.2. Reporting and flagging mechanisms

With regard to **reporting or flagging mechanisms (Article 28b (3) (d))**, Dailymotion has implemented a dedicated reporting tool⁶¹ to allow users to report any inappropriate content. So far, the main issue they have experienced involves finding the right balance between providing a user-friendly interface open to everyone while addressing all the legal requirements.

In the case of Facebook, users can report video content if they think it violates the Community Standards. Reporting works through a click on the three dots next to each piece of content. Users can also submit a request to remove content they believe is unlawful according to local law through the Legal Removal Request form. Users have the option to check the status of their report from the Support Inbox, which only they can see. From this page, users can learn more about the policies, cancel a report, and see the actions taken and decisions made. According to this respondent, the reporting tools, which entail enforcement of the Community Standards, have required the commitment of significant time and resources to develop from the ground up: at the time of writing this report, more

⁵⁹ <https://www.tiktok.com/legal/terms-of-service?lang=en#terms-eea>

⁶⁰ <https://www.twitch.tv/p/en/legal/community-guidelines/>

⁶¹ <https://faq.dailymotion.com/hc/en-us/articles/360015762519-Report-inappropriate-behavior-or-content>



than 35,000 people work on security and safety at Facebook,⁶² 15,000 of whom review content covering the most widely used languages. Collectively, they review around two million pieces of content every day. However, according to this stakeholder, overly detailed or restrictive requirements with regard to the design of the reporting or flagging systems risk reducing innovation, necessary to the constant improvement of the user experience in the use of these tools.

As for TikTok, users can report content via the website or the app; in the latter, users can access the report function or notify by simply holding a finger down on the video or comment itself. Direct messages and accounts can be reported using the three dots icon at the top right of the screen. Human moderators review every report: reported content is placed in a queue for the moderators to review, where the reason for reporting is displayed. The user is informed about the outcome of their report on a video through a message to their inbox.

When notifying TikTok users of removals following a violation of the terms of service (ToS), the user will be informed that the content has been taken down and given the reason for it. The user is given the in-app option to indicate that he/she believes TikTok has made a mistake and should reconsider. If the user makes such a request, a human moderator will consider the appeal and the content will be reinstated to its original status on the platform, or not, based on their assessment. If a user's video is removed because it constitutes an infringement of intellectual property rights, the user may submit a Counter Notification Form and their application will be handled by a specialist team. If other action is taken on the user's account, such as a suspension or an account ban (for severe or persistent violations of the ToS and/or Community Guidelines),⁶³ the user may ask TikTok to reconsider the decision. The matter will subsequently be considered by a human moderator or escalated as appropriate. If it is decided that the action was not necessary, the user's account may be restored. Twitch, with a very similar reporting mechanism, indicates that they receive a relatively low level of appeals.

In addition to user reports that are assessed by moderator teams, the livestreaming service Twitch allows streamers to set higher standards by choosing to apply filters which remove certain items or by appointing channel moderators who can spot and remove unacceptable behaviours and delay chat functions.

3.4.7.1.3. Guidance for uploaders and users

In relation to **guidance for uploaders and users about reporting or flagging mechanisms (Article 28b (3) (e))**, Dailymotion indicated that dedicated policies have already been designed and implemented within their Help Centre to protect users and provide them with guidance on how to report potential inappropriate content and/or guidance on how to contact relevant authorities if needed.⁶⁴

⁶² <https://about.facebook.com/actions/promoting-safety-and-expression/>

⁶³ <https://www.tiktok.com/community-guidelines?lang=en>

⁶⁴ <https://faq.dailymotion.com/hc/en-us/articles/360015762519-Report-inappropriate-behavior-or-content>



In the case of Facebook, high-level information regarding what effect has been given to content reports is provided to users on the “Report Something” page,⁶⁵ which includes sections such as “What happens when I report something to Facebook?”, “Does the person I report get notified?” and “Can I check the status of something I’ve reported to Facebook or cancel a report?”.

TikTok users can report inappropriate content or behaviour (such as videos, comments, audio, direct messages or a user’s profile) if they believe it violates the Community Guidelines, including content believed to be illegal. Users can report content in the app and through the website by choosing a reason why they think the content might violate the Community Guidelines; human moderators then review every user report. When content clearly violates the Terms of Service or Community Guidelines, action may include removing or disabling access to content and/or accounts. Non-users of TikTok – such as NGOs, government bodies and law enforcement agencies –, may also report content which will be reviewed by a human moderator.

Twitch has produced guidelines on best practices in reporting, recommending that users include certain information when reporting inappropriate behaviour. This would include the date, time (including time zone) and description of the violation; where the violation occurred and/or the target of the violation; content showing the violation (such as a link to VOD with a timestamp, a screenshot, or a chat log); and the game names (especially useful for reporting in-game cheating or prohibited games).⁶⁶

3.4.7.1.4. Systems allowing users to rate content

The amended AVMSD also refers to **systems allowing users to rate content (Article 28b (3) (g))**. According to Facebook, there is a lack of clarity in the AVMSD as to what specifically is referred to by “content rating”, in particular whether it refers to “age rating” or to some type of content descriptors, as well as the scope of application. This respondent is looking forward to further guidance from the competent national regulator. Furthermore, in their view, the direct application of the existing content rating systems, designed for traditional audiovisual services, to VSPs risks being overly complex and impractical. As the content on a VSP would be rated by users, who naturally have different views, there is a high risk of inconsistency in the application of the rating functionality. Even if the VSPs were to define guidelines to assist users, understanding the guidelines inherently entails a certain level of complexity, which could reduce incentives for most users to apply them correctly and consistently.

Facebook’s existing policies and processes are aimed at preventing illegal or harmful content from being generally available – e.g. users under 13 years of age are not allowed on the platform – and reporting systems and automatic tools identify and remove content violating the Community Standards. This prohibits a significant amount of content

⁶⁵ <https://www.facebook.com/help/263149623790594>.

⁶⁶ https://help.twitch.tv/s/article/how-to-file-a-user-report?language=en_US#BestPractices



that may affect minors, as well as hate speech and illegal content. For specific products, such as Facebook Pages, their creators can identify them as “adult only”.

TikTok has put in place warning labels and mask layers on some content. A warning label may read “The action in this video could result in serious injury”, overlaid onto the screen while the video plays. It could be shown on content that depicts a potentially dangerous action by trained professionals, such as extreme sports and professional stunts. The aim of these warning labels is to deter younger users from imitating any behaviour or activities that might cause them harm. Warning labels may also be applied on content to mark unverified information such as the promotion of conspiracy theories. In addition, warning labels may be used for content which is educational and in the public interest but might be shocking for some users, such as human childbirth.

Mask layers are screens that are placed ahead of the video content being shown to warn users that the content behind the screen may be considered disturbing by some of them. A mask layer may, for example, state “This video may contain sensitive content”, “This video may be disturbing to some users” or “Viewer discretion is strongly advised”. The user is invited, as the primary option, to skip the video. Mask layers may be used on content that shows violence or distressing scenes in an educational or news context where the purpose of the content is to inform but the material may be upsetting to younger users.

Some of the respondents indicate that this provision does not affect them. For instance, Dailymotion highlighted the fact that they are a pure video-sharing platform and not a social network; therefore, this provision would not be adapted to their service, as most of their users are not logged in or watch the content on a third-party service.

3.4.7.1.5. Procedures for complaint resolution mechanisms

Article 28b (3) (i) refers to **the procedure for complaint resolution mechanisms**. All respondents already have complaint mechanisms in place. Usually, problems can be reported from their in-app settings or by filling in a form. Dailymotion indicated that professional users can already seek redress if they feel their content has been moderated unfairly. Moreover, this VSP is reflecting on extending this normalised process to every user. As for their reporting tool, this is even open to users who are not logged in; however, this process is not designed to allow notifiers to manage the different stages. Here the company admits facing a dilemma between keeping an open reporting tool or restricting its access to their logged-in users to provide a secure complaint mechanism.

Facebook has set up an appeals process for content removal. If a piece of content has been removed because it violates the Community Standards, the user who uploaded it will be notified and given the option to request additional review. In April 2018, appeals procedures were launched globally for content that was removed for violating the Community Standards for nudity or sexual activity, hate speech and violence. The option of re-review is now available for additional content areas, including dangerous organisations and individuals, bullying and harassment, regulated goods and spam. The company is considering extending the scope of areas for re-review as well as providing appeals for content that was reported but not acted on. Moreover, in order to answer the most difficult



questions, Facebook has established an independent “Oversight Board” whose decisions are binding.

When it comes to **users’ awareness and media literacy measures (Article 28b (3) (j))**, not all respondents have started implementing them. Besides, those that are not social networks wonder to what extent this would be feasible, as the rate of users who actually log in may be too low for effective personalised communication. For instance, in the case of Snapchat, a range of online resources (on navigating through Snapchat, staying safe on the platform, and information about how user data and information is used) are provided through the safety centre⁶⁷ and privacy centre,⁶⁸ both of which are easily accessible in-app, as well as through the external Snapchat support website. Nevertheless, most awareness and media literacy actions by the stakeholders approached are linked to minors – for further details, see the following section.

3.4.7.2. New obligation to protect minors from harmful content

Article 28b (3) of the AVMS Directive also lists the appropriate measures to be taken by VSPs in order to comply with their new obligation to protect minors from harmful content, which includes, *inter alia*: identification of commercial communications in user-generated content, reporting or flagging mechanisms, age verification systems, parental control systems or rules about the use of personal data of minors.

When it comes to **adapting the terms and conditions to include obligations to protect minors from harmful content (Article 28b (3) (a))**, several respondents indicate that certain policies are particularly intended for minors, such as those related to nudity, trolling and bullying or graphic violence. In addition to that, some stakeholders apply age limitations to anyone wishing to become a user, and even those minors who are allowed to register will have a limited experience, reducing the content – including advertising – to which they have access. This usually includes graphic material, as well as certain services and products such as alcohol, nicotine products or financial services. For Dailymotion, the main issue experienced was having to deal with national differences regarding harmful and illegal content.

With regard to **adapting terms and conditions to include obligations regarding commercial communication (Article 28b (3) (b))**, two respondents provided some examples. Advertisers on TikTok must comply with the Community Guidelines and advertising policies, which go beyond the categories of prohibited advertising listed in the AVMSD, providing guidance on the types of products and services that can be advertised (this excludes, among other things, tobacco products, drug-related products and services, weapons, gambling, sexual products and services, political ads and discriminatory content). In a similar vein, Facebook’s advertising policies⁶⁹ include 30 categories of “prohibited” content, such as the advertising of tobacco products or of illegal products or services. As for “restricted” content, ads that promote or reference alcohol must comply with all applicable local laws, required

⁶⁷ <https://snap.com/en-US/safety/safety-center>

⁶⁸ <https://snap.com/en-US/privacy/privacy-center>

⁶⁹ <https://www.facebook.com/policies/ads/>



or established industry codes, guidelines, licences and approvals. In addition, there are age limitations which affect content categories such as alcohol or adult products or services.

With regard to the **identification of commercial communications in user-generated content (Article 28b (3) (c))**, not all respondents have put such measures in place. Facebook has approached the issue by labelling all monetised advertisements uploaded as “Ads”. In the case of branded content, there is a branded content tool⁷⁰ to tag their business partner; a paid partnership label is applied to each ad post managed through the branded content tool and highlighted.⁷¹

The main challenge with **age verification systems (Article 28b (3) (f))**, according to Dailymotion, was the lack of clear guidelines regarding the age verification process (especially for their users, who are not logged in) - this is the reason why their parental filter is activated by default. Twitch highlights the importance of finding a common standard for age verification that ensures robust protections for both online safety and privacy.

As an example, TikTok uses an age gate on registration as well as moderation techniques to make sure the VSP is only used by those who meet the age requirements. This age gate is presented neutrally so that users are not encouraged to enter a date of birth indicating they are over 13 years; a prospective user who says they are under 13 is sent back to the registration page, and is blocked from immediately re-entering a different date of birth. In the case of Facebook, the platform prevents minors from editing the initially entered birth date. Users are also prevented from attempting to register more than twice in a single session and enforce a waiting period before they can try again. Moreover, the company envisages not displaying a default age at or above the minimum required age to access the services. This social network considers that age verification will be complicated on a per-app basis and a centralised approach would avoid each individual provider having to come up with their own unique scheme to verify age, an undertaking that will prove highly challenging for companies regardless of size, resources, and technical expertise.

In addition, TikTok encourages users to report any suspicion that another user is under 13 years of age. If the platform becomes aware, through a user report or moderation, that someone under 13 is using the services, the user’s account will be terminated and permanently blocked. TikTok also has a 12+ rating in the App Store and a Google Play Store rating of “Parental Guidance Recommended”. Parental controls on each store allow parents to block apps with such ratings on their children’s devices.

The few respondents which have implemented **parental control systems (Article 28b (3) (h))** concentrate on a minimum age to become a user and a limited experience for older minors. For instance, in addition to the platform settings and restrictions, Facebook provides tools for parents and educators,⁷² which include details on how to report underage children (under 13), how to remove a child’s image, information to make parents aware that

⁷⁰ <https://www.facebook.com/business/help/788160621327601?id=1912903575666924>

⁷¹ <https://www.facebook.com/policies/brandedcontent/>

⁷² <https://education.fb.com/>



they cannot monitor their child's activity on Facebook, reporting tools and information on privacy. Moreover, the safety centre includes a parents portal and a youth portal.

As indicated above, most measures aimed at increasing **users' awareness and media literacy** are aimed at minors. For instance, TikTok has put in place a series of measures such as the educational video series "You're in Control",⁷³ presenting TikTok's safety and privacy controls in an accessible and easy to understand fashion for young users. In addition, there is a youth portal⁷⁴ where teens and their families can learn about internet safety and the tools and controls built into TikTok in a user-friendly format. Lastly, the safety centre⁷⁵ contains resources to help users further understand TikTok's policies on topics including anti-bullying and impersonation. In the case of Twitch, beyond the available guidelines on different topics, such as privacy (with a section devoted to children's privacy), the service offers users ways to protect themselves; for instance, users can disable the sharing of activities with friends, block whispers – messages in Twitch language – from strangers or block the receiving of gifts on channels the user does not follow. These measures are particularly intended for, but not limited to, minors.

As for **rules about the use of personal data of minors**, several respondents indicated that these data are used in accordance with the GDPR (General Data Protection Regulation). For example, if the minor is below the age of consent in their EU country, he/she is sent into a stripped down service and receives targeted ads. Lastly, there were a series of issues where the respondents have not implemented specific mechanisms devoted to minors and they refer to the general answers provided in section 3.4.7.1. on measures to protect the general public from illegal content and content that incites violence or hatred; these include reporting or flagging mechanisms, guidance for uploaders and users about reporting or flagging mechanisms; systems allowing users to rate content; and complaint resolution mechanism.

3.4.7.3. Raising users' awareness of new measures to protect minors and the general public, and media literacy

One of the measures listed in Article 28b (3) (j) of the AVMSD is "providing for effective media literacy measures and tools and raising users' awareness of those measures and tools". Respondents seem to agree that one of the most effective ways to raise awareness is to make any information available on policies and measures in an easily accessible and understandable way. In some cases, they are considering launching awareness-raising campaigns to inform users about these measures. Dailymotion acknowledged that they have not taken any action in this regard; not being a social network, they cannot bring personalised communication to most of their users, as subscription is not required to use the service. Therefore, they focus on an understandable and user-friendly interface when broadcasting these messages.

⁷³ <https://newsroom.tiktok.com/en-us/youre-in-control-video-series-stars-tiktok-creators-to-educate-users-about-safety-features>.

⁷⁴ <https://www.tiktok.com/safety/youth-portal?lang=en>.

⁷⁵ <https://www.tiktok.com/safety/en-us/>.



As already mentioned, some platforms have put in place special portals and made available resources and materials for parents and educators; nevertheless, this applies to very concrete areas of the new legislation (mainly to minors) and not necessarily to awareness raising among the general public. As mentioned above, in the case of TikTok, the key media literacy and awareness-raising tools include clear terms of service and Community Guidelines, an educational video series, a youth portal and a safety centre with available resources to better understand the company's policies on a series of key topics. In a similar line, Facebook's Help Centre contains comprehensive information on content policies and the reporting system, including specific tips in relation to video content across the website. In addition, their safety centre provides, among other things, a parents portal; a youth portal; a digital literacy library,⁷⁶ with lesson plans designed by experts to help young people develop the skills needed to navigate the digital world, critically consume information and responsibly produce and share content; the Online Well-being site,⁷⁷ with tools for suicide prevention; the Not Without My Consent site,⁷⁸ with information on how to respond to intimate images shared without permission; and the Bullying Prevention Hub,⁷⁹ a resource for teens, parents and educators seeking support and help for issues related to bullying and other conflicts. In addition, Facebook runs ad-hoc campaigns and programmes addressed to local communities, in many instances aimed at young users, which include digital skills initiatives in the areas of safety or well-being.

3.4.7.4. Need for strengthened cooperation between relevant authorities with regard to the new rules concerning VSPs

Twitch considers that it is helpful to have common European standards according to the AVMSD baseline rather than a system that varies county-by-country, as it is in the industry's own interest to avoid the proliferation of different national systems. Nevertheless, Dailymotion argues that better cooperation between authorities is necessary, especially for medium-size stakeholders, to obtain clear guidelines to ensure better compliance regarding the new AVMS Directive obligations. This company regrets that data protection and audiovisual authorities do not always work together to define clear guidelines, notably regarding parental filters. In addition, it argues that medium-size stakeholders do not have the financial capacity to develop and implement a compliance plan for each member state.

A larger-size respondent such as TikTok has taken a proactive approach by setting up an EMEA⁸⁰ trust and safety hub⁸¹ to collaborate closely with regional regulators, policymakers, government and law enforcement agencies where required. The company employs local teams to design and enforce policies, as these depend on context and require a sophisticated understanding of cultural nuances.

⁷⁶ <https://www.facebook.com/safety/educators/>.

⁷⁷ <https://www.facebook.com/safety/wellbeing>.

⁷⁸ <https://www.facebook.com/safety/notwithoutmyconsent>.

⁷⁹ <https://www.facebook.com/safety/bullying/>.

⁸⁰ Europe, the Middle East and Africa.

⁸¹ <https://newsroom.tiktok.com/en-gb/tiktok-establishes-new-emea-trust-and-safety-hub-in-dublin>.



Facebook considers that it is a little premature to assess whether the current cooperation system will be sufficient in relation to platforms, at this stage. Although it fully supports the COO principle, it believes that the single regulator model should be complemented with a strong cooperation regime which ensures a consistent approach to VSP regulation across member states and an effective solution to cross-border cases. This stakeholder is of the opinion that an essential prerequisite for an effective response to cross-border challenges is having as much harmonisation as possible of the legal national regimes and of the regulatory practices at enforcement level. For this stakeholder, there needs to be a consistent understanding of how platforms fall within the scope of the AVMSD (i.e. how different products are categorised as regulated services). Besides, there is still room for divergences in the application of the Commission's guidelines. The required level of harmonisation would call for a bigger role for EU coordination of regulators, to avoid discrepancies and deviations from the rules, to work on clear and harmonised definitions and regulatory practices, as well as to provide for a swift and effective forum for the handling of cross-border cases. A cooperation mechanism for VSP regulation needs to reflect the cross-border nature of VSPs, potentially through a system that looks at cross-border issues as a whole, rather than based on a series of bilateral cooperations, as envisaged by Articles 3 and 4 of the AVMSD.

According to this respondent, a strengthened cooperation system would imply regulators coordinating and working together to define policy, providing an opportunity for real collaboration with regulators and governments, rather than a system which is just for checks and balances. When it comes to VSPs, it would be helpful to have cooperation on the following.

- Consistent AVMSD definitions of AVMSD terms such as “VSP” (including “essential functionality” in line with the Commission guidance), “profiling”, “targeted advertising” or “direct marketing”, and consistent implementation of these concepts.
- A clear definition of content that “may impair the physical, mental or moral development” of minors and acknowledgement of the risks of subjective interpretation. In particular, certain content may have different meanings in different cultures; content may be perceived by some as raising awareness but to others as introducing harm; and many subjects may impair physical, mental or moral development – for example, baking videos featuring recipes high in fat and sugar could be interpreted as harming a minor's physical development and then affecting their mental health.
- Where appropriate measures may involve the implementation of systems. In some cases such systems are needed and will be deemed an appropriate measure, whereas in others, such systems may not be necessary in practice to ensure compliance with the general objectives of the AVMSD.
- The role of self- and co-regulatory models and in which specific areas they would be most beneficial (e.g. in the protection of minors or innovation with regard to specific systems such as age verification or parental controls).



3.4.8. Regulatory challenges

3.4.8.1. Main challenges that the national regulatory authority is facing with regard to the adaptation to the new rules of the AVMS Directive concerning VSPs

It is still early to assess the major challenges for the national regulatory authorities at this point and some national regulatory authorities assess that giving sustainable answers to this question appears to be premature at this stage, as the preparation and adoption of secondary legislative acts will influence the approach to the new legislative framework (DE). Nonetheless, some emerging trends do appear to be of particular interest. The challenge in identification of VSPs from the perspective of the jurisdictions is flagged by a number of national regulatory authorities (AT, CY, CZ, EE, FI, FR, LU, MT, PT, SE).

As already having some experience of a certain level of regulation of VSPs, the Italian regulatory authority Agcom⁸² identifies information asymmetry, the difficulty in accessing VSPs' data and monitoring their activity as the main challenges. Concerns over VSPs' uptake of obligations stemming from the revised AVMSD is regarded to be a significant challenge by some (BE FR), while the distinction between VOD and VSP services is noted as a particular concern as well (BG).

Engaging with the VSPs and exchanging information on the new regulatory framework is deemed highly important (BE NL, GB). The identified principles vis-à-vis the regulation of VSP services are those of suitability (a need for oversight of the different purposes and functions of different services), cooperation (especially international cooperation, with the need for alignment of regulatory principles and practices and exchange of best practice), clarity (of rules and definitions, making sure to stay clear of arbitrary enforcement), flexibility (considering that, size-wise, there is a big difference between different companies in this sector and a one-size-fits-all approach will not always be appropriate) and overall quality (BE NL).

Challenges related to the identified need for regulatory adaptation, training and learning processes are noted (ES), as well as ensuring the considerable organisational changes required (GR) and the increase in the capacities and capabilities of the regulator (GB) are deemed very relevant. Also deemed relevant are the need for an interactive approach and a full understanding of VSP services and the different risks that harmful material may pose, based on a reliable targeted research agenda and data analytics, as well as the understanding on the part of VSPs of their new obligations and the steps needed to come into compliance (GB).

Implementing rules with due consideration for the variety amongst the providers that have already been developed by the VSPs is another anticipated challenge (regarding

⁸² Agcom launched a working group in 2018 aimed at extending the provisions regarding pluralism and correctness of information within electoral campaigns to include VSPs.



business model, size, target audience, etc.), as well as challenges linked to the cross-border nature of VPSs (FR).

The protection of pluralism/diversity in relation to the increasing requirements to eliminate restrictions to allow full free-market competition is yet another foreseen challenge (HR), while some identify linguistic challenges, both where users' content is of one origin and platforms are of another, and in relation to the supervision of certain content (PT). The sharing of competences vis-à-vis consumer protection, namely in terms of exposure to commercial content, in particular alcoholic beverages and tobacco advertising is also listed (PT).

In Sweden, the limited opportunities for co-regulation due to the possibly limited number of providers under its jurisdiction is identified as one of the challenges. Within this jurisdiction, the development of an out-of-court redress mechanism is also identified, having regard to the fact of having regard to the need for cooperation with VSPs which are not under its own jurisdiction while developing such a mechanism. And finally, timing and legal deadlines are also considered challenging, due to the large number of general acts that will have to be prepared and the short legal deadline for the adoption and amendment of all secondary legislations (SI).

3.4.8.2. Experience regarding any particular issues with the measures put in place by VSPs prior to the implementation of the AVMS Directive

On the question of the experience in issues related to the measures put in place by VSPs prior to the implementation of the revised AVMSD, notably with regard to the areas of the protection of minors from harmful content, the protection of the general public from illegal content and effective media literacy and awareness initiatives, there is little information at this point. Some notable examples are provided, related to consumer protection issues, where the VSPs have been in the regulatory focus due to certain commercial activities, such as alcohol and gambling advertising (EE).

The United Kingdom's Ofcom is in a position to provide more evidence in this regard, having undertaken various activities while preparing for its new duties for regulating VSPs (e.g. the publication of calls for evidence in July 2020 to gather information from a wide range of stakeholders about the measures VSPs currently have in place, including from VSPs themselves, commissioning consumer research designed to inform its policy development, as well as cooperation with academic experts for the purpose of preparing reports vis-à-vis the understanding of online hate and the online protection of minors). Some of these evidences show that, while VSPs are used widely, the majority of users (70%) encountered exposure to at least one potentially harmful online experience; that safety measures on VSPs are not at the top of users' minds, with only 40% of users claiming awareness of such measures on the platforms they use; that only a minority (15%) of users feel the current measures are sufficient, that the exposure to potential online harms is particularly high for younger people, and people with mental health conditions, etc. Overall, the evidence suggests that the: *"...awareness of safety measures to protect users is low, with signs of confusion about which measures are available and the impact of those*



*measures.*⁸³ The benefits of various cooperation initiatives on related topics are identified (IT, SI).

3.4.8.3. Cooperation between relevant authorities with regards to the new rules concerning VSPs, in particular in cross-border cases

On the final question concerning the relevance of cooperation between regulatory authorities on the newly introduced rules for VSPs, there is a universally held and firm belief in the benefits and necessity of such cooperation. Reasons for advocating cross-border cooperation (due to the cross-border nature of the services) relate to the need for enhanced cooperation as it is crucial to enable an effective application of the revised AVMSD (BE FR). In addition, the consistent application of the harmonised rules also make it easier for VSP providers to understand what is required, just as cooperation between the competent authority in the country of origin with regulators in the country of destination can help to provide a “boots on the ground” view of how that VSP provider is complying with the rules for users in other jurisdictions and enable consistency of enforcement actions (GB). Further, the exchange of information is seen as the first step towards avoiding parallel investigations (AT), while cooperation can be beneficial in order to assist the competent authority in fulfilling its supervisory obligations (GR), and it can help resolve jurisdictional conflicts or uncertainties (LU). The regulation of VSPs will be significantly different compared to the regulation of linear and on-demand audiovisual media services, which will make the exchange of experience particularly valuable (SI).

Cooperation under the umbrella of the European Regulators Group for Audiovisual Media Services (ERGA) is identified by several authorities (BE FR, DE, EE, ES, GR, HU, IT, SE, SI), ERGA being composed of representatives of national regulatory authorities or bodies of member states and referred to in the revised AVMSD. Its primary responsibility involves overseeing audiovisual media services, giving opinions and providing technical expertise to the European Commission in its task of ensuring consistent implementation, exchange of experience and best practice, etc. (Article 30b of the revised AVMSD). It is stated that the 2020 ERGA Memorandum of Understanding⁸⁴ between its members is establishing an adequate framework for fostering enhanced cooperation (BE FR, ES, IE, MT), making a lot of progress in this respect (IT), with strong emphasis on this cooperation (DE). Swedish authorities believe that there is already effective cooperation between relevant authorities in cross-border cases (especially with the aforementioned Memorandum of Understanding), but it is stated that there is always room for improvement both at a national and international level, especially with other authorities which are not media regulators.

The European Platform of Regulatory Authorities (EPRA), the oldest and largest network of European regulators for the exchange of information, sharing of experience on

⁸³ Ofcom report: “User Experience of Potential Online Harms within Video Sharing Platforms”, available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0024/216492/yonder-report-experience-of-potential-harms-vsps.pdf.

⁸⁴ https://erga-online.eu/wp-content/uploads/2020/12/ERGA_Memorandum_of_Understanding_adopted_03-12-2020_L.pdf.



practical cases and best practice, is also seen as a much-needed multilateral forum which enables cooperation, and can help accelerate the development of best practice, considering the fact that the VSP regime's focus on systems and measures relating to the organisation of content, rather than the content itself, makes it a novel area for many regulators (GB).



4. Studies and research

The list of most significant studies and research analyses reported, relative to the partial inclusion of VSPs under the regulatory remit are available in the table below.

Table 20. Existence of studies and research (only territories with identified studies are shown)

	Existence of studies and research
BE FR	Opinion of the advisory board of the CSA in relation to the Audiovisual Media Services and Video-Sharing Platforms Act (<i>Avis n° 01/2020 - Avis relatif à l'avant-projet de Décret sur les services de médias audiovisuels comprenant notamment le projet de transposition de la Directive européenne 2018/1808 (dite Directive SMA) et la transposition du Code des Communications électroniques européen (CCEE)</i>) ⁸⁵ Parliamentary documentation of the French Community in relation to the Act (<i>Projet de décret relatif aux services de médias audiovisuels et aux services de partage de vidéos</i>) ⁸⁶
BE NL	Advice for the Children's Rights Commissioner on the implementation of AVMD2018 and amendments to the Flemish Media Decree (Audiovisuele mediarijchtlijn opportuniteit voor ambitieus mediadecreet met oog voor minderjarigen en hun rechten), 11 March 2020 ⁸⁷ Note to the Flemish Government concerning the draft decree amending the Media Decree (Nota aan de Vlaamse Regering), 26 June 2020 ⁸⁸ Opinion of the SARC Media (Advisory body to the minister of Media) on the draft decree amending the Media Decree (Advies wijziging Mediadecreet: gedeeltelijke omzetting AVMD-richtlijn), 17 July 2020 ⁸⁹
BG	Reasons for adoption of a draft law amending and supplementing the Radio and Television Act, an explanatory report to the draft Law for the amendment of the Radio and Television Act. ⁹⁰
DE	Self- and co-regulation in the new AVMSD, 2019 ⁹¹ First Public Consultation on the new State Media Treaty, with submissions from academic institutes, associations and corporations, 2018 ⁹²

⁸⁵<https://www.csa.be/document/avis-relatif-a-lavant-projet-de-decret-sur-les-services-de-medias-audiovisuel/>.

⁸⁶<https://www.pfwb.be/le-travail-du-parlement/doc-et-pub/documents-parlementaires-et-decrets/dossiers/001679298>.

⁸⁷https://www.kinderrechtencommissariaat.be/sites/default/files/bestanden/advies_2019_2020_08_audiovisuele_mediarijchtlijn.pdf.

⁸⁸ <https://beslissingenvlaamseregering.vlaanderen.be/document-view/5EF1ADC0AD2692000800050B>.

⁸⁹ https://cjsm.be/sarc/SR_media/adviezen/20200717_Advies_wijziging_Mediadecreet_n.a.v._AVMD2018.pdf

⁹⁰ <http://mc.government.bg/page.php?p=141&s=737&sp=0&t=0&z=0>.

⁹¹ <https://rm.coe.int/iris-special-2019-2-self-and-co-regulation-in-the-new-avmsd/1680992dc2>.

⁹² <https://www.rlp.de/de/regierung/staatskanzlei/medienpolitik/medienstaatsvertrag/onlinebeteiligung-2018/>



	Existence of studies and research
	Second Public Consultation on the new State Media Treaty, with submissions from academic institutes, associations and corporations, 2019 ⁹³
DK	Criminal liability for the content of online media – About intermediary responsibility for media not covered by the Media Liability Act, April, 2016 ⁹⁴ Analysis of social media responsibilities. Cases of sharing homicide videos, suicide notes, nude photos and assaults give rise to questions: Who is responsible for the content that is spread on social media - and what responsibility do we in Denmark want social media to have?, August 2019 ⁹⁵ Recommendations on better protection on social media, November 2019 ⁹⁶
EE	2019 Ministry of Culture study on the situation and trends in media policy ⁹⁷
FI	Ministry of Transport and Communications: “Video-sharing platform services in Finland”, 2019 ⁹⁸ University of Eastern Finland, Faculty of Law: “A report of the consumer rights provided for in the Electronic Communications Services Act and the need for relevant provisions”, 2019 ⁹⁹ Finnish Government: “Project to reform the law on Electronic Communications Services” ¹⁰⁰
GB	Plum Consulting on behalf of the UK Dept of Culture, Media & Sport, Understanding VSPs under UK Jurisdiction, 2020 ¹⁰¹ The Alan Turing Institute on behalf of Ofcom, Understanding online hate VSP Regulation and the broader context, 2021 ¹⁰² The Institute for Connected Communities, University of East London on behalf of Ofcom, Research on the Protection of Minors, 2021 ¹⁰³ Yonder on behalf of Ofcom, User Experience of Potential Online Harms within Video-Sharing Platforms, 2021 ¹⁰⁴

⁹³ <https://www.rlp.de/index.php?id=32713>.

⁹⁴ <https://portal.findresearcher.sdu.dk/en/publications/strafansvar-for-indholdet-af-onlinemedier-om-formidlersansvar-for->

⁹⁵ https://digitaltansvar.dk/wp-content/uploads/2019/12/KOMPR.-Analyse-af-de-sociale-mediers-ansvar_Digitalt-Ansvar-aug.-2019.pdf.

⁹⁶ https://digitaltansvar.dk/wp-content/uploads/2019/12/Anbefalinger-til-lovgivning_Digitalt-Ansvar-nov.-2019.pdf.

⁹⁷ https://www.kul.ee/sites/kulminn/files/2019_meediapoliitika_olukord_arengusuunad_aruanne.pdf.

⁹⁸ https://api.hankeikkuna.fi/asiakirjat/f4a8e63a-5c4f-4c82-a778-dbed38de6595/0efd2377-b58b-495c-ad7a-b8f850500939/RAPORTTI_20190408113856.pdf.

⁹⁹ https://api.hankeikkuna.fi/asiakirjat/f4a8e63a-5c4f-4c82-a778-dbed38de6595/910018a6-25d2-4509-9cbb-64612dcb67aa/RAPORTTI_20191028072931.pdf.

¹⁰⁰ <https://valtioneuvosto.fi/hanke?tunnus=LVM004:00/2019>.

¹⁰¹ <https://www.gov.uk/government/publications/report-on-video-sharing-platforms>.

¹⁰² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/216490/alan-turing-institute-report-understanding-online-hate.pdf.

¹⁰³ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/216491/uel-report-protection-of-minors.pdf.

¹⁰⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/216492/yonder-report-experience-of-potential-harms-vsps.pdf.



	Existence of studies and research
IT	<p>AGCOM study: Hearing of the President of the Italian Communications Authority, Mr. Angelo Marcello Cardani – Examination of the Bill containing “European Law” (Audizione del presidente dell’autorità per le garanzie nelle comunicazioni Angelo Marcello Cardani - Esame del disegno di delegazione europea, 2020)¹⁰⁵</p> <p>European Law 2019 (Bill 1721). First observations by Confindustria Radio Televisioni – Senate of the Republic, XIV Committee (European Affairs), 2020 (Confindustria Radio Televisioni, Legge delegazione europea 2019 (AS 1721). Prime osservazioni Confindustria Radio Televisioni Senato – XIV Commissione (Politiche dell’Unione Europea), 2020)¹⁰⁶</p> <p>Bill for European Law no. 1721 – Notes on the relevant directives, 2020 ANICA - Associazione Nazionale Industrie Cinematografiche Audiovisive e Multimediali, LEGGE DI DELEGAZIONE EUROPEA N. 1721 DIRETTIVE OGGETTO DI OSSERVAZIONI, 2020¹⁰⁷</p> <p>I-COM, AVMSD Refit or Reform? Audio Visual Media Services in the Digital Era, 2016¹⁰⁸</p>
LT	<p>Regulation of user-generated content in copyright, MA Thesis in Law, 2019 (Vilnius University Norvaišas, V. Vartotojų sukurto turinio reguliavimas autorių teisėje)¹⁰⁹</p> <p>Vytautas Magnus University Leskauskaitė L. Social Media Leaders and Their Communication: Verbal and Non-Verbal Communication. MA thesis in Communication, 2018¹¹⁰</p> <p>Kaunas University of Technology Jurgutytė, M. Visual Content Creation Solutions for Communication with GenerationZ in Social Media. MA Thesis in Marketing Management, 2018¹¹¹</p>
NL	<p>Study by Radboud University and the University of Amsterdam commissioned by the Dutch Media Authority study: “How do minors experience sponsored video on YouTube?”, 2019¹¹²</p>
NO	<p>The Digital Services Act explained (Ytringsfrihetskommisjonen Digital Services Act forklart), 2021¹¹³</p> <p>Children’s lives in front of, behind and on the screen – Preliminary edition. Green paper. (NOU 2021: 3 Barneliv foran, bak og i skjermen – Foreløpig utgave)¹¹⁴</p> <p>Guide for YouTubers and video bloggers about the labelling of advertisements (Medietilsynet Fredrikstad: Medietilsynet)¹¹⁵</p>

¹⁰⁵ <https://bit.ly/31eZDbW>.

¹⁰⁶ <https://bit.ly/3iZ5x6K>.

¹⁰⁷ <https://bit.ly/34ozWau>.

¹⁰⁸ <https://bit.ly/2Eo4OVv>.

¹⁰⁹ <https://epublications.vu.lt/object/elaba:69378867/69378867.pdf>.

¹¹⁰ <https://www.vdu.lt/cris/handle/20.500.12259/35647>.

¹¹¹ <https://epubl.ktu.edu/object/elaba:28352683/28352683.pdf>.

¹¹² <https://www.cvdm.nl/sites/default/files/files/Rapportage%20Onderzoek%20effecten%20reclame%20in%20YouTube%20video%E2%80%99s.pdf>.

¹¹³ <https://www.ykom.no/2021/03/03/digital-services-act-forklart/>.

¹¹⁴ <https://www.regjeringen.no/no/dokumenter/nou-2021-3/id2838679/>.

¹¹⁵ <https://www.medietilsynet.no/globalassets/engelsk/engelsk-youtube-veileder.pdf>.



	Existence of studies and research
	<p>A study of cash flows in the value chain for Norwegian films and series (Utredning av pengestrømmene i verdikjeden for norske filmer og serier), Oslo: Menon 2018¹¹⁶</p> <p>The availability of Norwegian films on VOD platforms, (Norsk films tilgjengelighet på VOD-plattformer)¹¹⁷, Oslo, NFI 2017</p> <p>How to protect Norwegian and European content in the future? (Hvordan ivareta norsk og europeisk innhold i fremtiden?), Oslo, NFI 2017¹¹⁸</p>

Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire

¹¹⁶ <https://www.menon.no/wp-content/uploads/2018-5-Utredning-av-pengestr%C3%B8mmene-i-verdikjeden-for-norske-filmer-og-serier-2.pdf>.

¹¹⁷ <https://www.nfi.no/statistikk/statistikk-analyse-og-rapporter>.

¹¹⁸ <https://www.nfi.no/statistikk/statistikk-analyse-og-rapporter>.



5. National legal summaries

5.1. AT – Austria – National legal summary¹¹⁹

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the Audiovisual Media Services Act (AMD-G).

5.1.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Audiovisual Media Services Act (*Audiovisuelle Mediendienste-Gesetz*, AMD-G).¹²⁰
- Law on the establishment of a communications authority Austria (*KommAustria-Gesetz*, KommAustria-G).¹²¹
- Law on the Austrian Broadcasting Corporation (*ORF-Gesetz*, ORF-G).¹²²

5.1.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

¹¹⁹ The factsheet on Austria incorporates feedback received from Stefan Rauschenberger, Director of the Legal Department at Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) during the checking round with the national regulatory authorities.

¹²⁰ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412>.

¹²¹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001213>.

¹²² <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785>.



Table 21. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Austrian response to European Audiovisual Observatory standardised survey

5.1.2.1. VSP service

Article 2 no. 37b of the AMD-G defines the term “video-sharing platform service” by transposing the text of the revised AVMSD verbatim, as follows:

Video-sharing platform service is 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.

5.1.2.2. VSP provider

Article 2 no. 37a of the AMD-G defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim word-for-word, as follows: “the natural or legal person who offers a video-sharing platform service”.

5.1.2.3. User-generated video

Article 2 no. 26b of the AMD-G, defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:



a sequence of moving images with or without sound, which represents a single component regardless of its length and is created by a user and is uploaded by this user or another user on a video sharing platform.

5.1.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.1.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.1.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.1.3.1. General provisions

Article 54e para 1 No 2 of the AMD-G stipulates that platform providers must ensure that reported content is either removed immediately and without culpable hesitation or that access to it is blocked, insofar as it can be classified as child pornography; incitement of terrorist offences or approval of terrorist offences; hate speech; incitement to violence or hatred against a group or against a member of such a group because of gender, race, skin colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. In accordance with Article 54h para 1 no. 2 of the AMD-G, anyone who has not



taken measures to protect the general public from prohibited content on their platform is guilty of an administrative offence and is to be punished by the regulatory authority with a fine of up to EUR 150 000.

Relevant legislation applicable to audiovisual media service providers only does not contain a legal definition of content which may impair the physical, mental or moral development of minors. Article 39 para 1 of the AMD-G stipulates that any content in audiovisual media services that may impair the physical, mental or moral development of minors may only be provided by the media service provider in such a way that minors cannot normally perceive it. In the case of television programmes, this must be ensured by choice of airtime. The unencrypted broadcast of TV programmes that may impair the physical, mental or moral development of minors must be announced at the beginning by acoustic signals and has to be identified by optical means throughout the broadcast. Television programmes must not contain any programmes that could seriously impair the physical, mental or moral development of minors. In particular, they must not contain pornography or unprovoked violence, in accordance with Article 39 para 2 of the AMD-G.

As for issues related to commercial communications, legal responsibility in this regard stipulates that all media service providers must create and comply with guidelines on audiovisual commercial communication related to alcoholic beverages before, after and during children's programmes. The guidelines must contain provisions as to which forms and contents of audiovisual commercial communication are inappropriate in this environment. The guidelines are to be published in such a way as to be easily and always accessible, in accordance with Article 35 para 2 of the AMD-G. Also, audiovisual commercial communication must not lead to the physical, mental or moral impairment of minors.

5.1.3.2. Adapting terms and conditions of the VSP service to include these obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of VSP services the requirements referred to in section 1.1.3.1, Article 54e para 2 No. 1 states that the platform provider must ensure the issuing and announcement of easily understandable and easily accessible general terms and conditions, in which the services offered are described with understandable explanations of the provisions applicable to the content provided by users and that the general terms and conditions have to be reported to the regulatory authority, which has to publish the terms (Article 54e (2) Z 3).



5.1.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers, Article 54e para 4 No. 2 of the AMD-G obliges the platform provider to ensure, by means of the general terms and conditions, that, while uploading the content, the users of the platform comply with Articles 31 and 33 to 36 of the AMD-G, which stipulate the rules concerning the general requirements for audiovisual commercial communication, audiovisual commercial communications for tobacco products, pharmaceuticals, medical devices and therapeutic treatments, for alcoholic beverages and audiovisual commercial communication and the protection of minors.

5.1.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 54e para 4 No. 3 of the AMD-G states that, in the case of audiovisual commercial communication contained in programmes or user-generated videos or attached to them, the platform provider must ensure that a function which helps the user to explain whether the content contains audiovisual commercial communication (based on the level of knowledge that can be expected of them) is available for the user uploading the content.

5.1.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the general provisions, Article 54e para 1 No. 1 lit. b of the AMD-G states that platform providers have to operate a system that allows users, by the use of easily accessible, constantly available and easily manageable functionalities on the VSP, to report content, including the information required for an assessment, to the platform provider.



5.1.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the proposed legislation, in Article 54e para 1 no. 1 lit c of the AMD-G, contains the obligation for platform providers to operate a system on the VSP that explains to users how their report (in accordance with Article 54e para 1 lit b of the AMD-G) will be handled and what the subsequent steps and results of this process were. This must be done by means of easy-to-find, constantly available and easy-to-use options.

5.1.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 54e para 3 No. 2 of the AMD-G, states that the most harmful content, such as gratuitous force and content that is mainly limited to the unreflective representation of sexual acts, or which contains parts of programmes that are reduced to the presentation of such content, must only be provided if measures, such as, in particular, age verification systems or similar access control measures, ensure that minors do not usually or normally access such content.

5.1.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 54e para 3 No. 1 of the AMD-G obliges platform providers to operate a system that allows users, by the use of easily accessible, constantly available and easily manageable means on the VSP, to rate the available content for third parties to see.



5.1.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 54e para 3 No. 2 of the AMD-G stipulates that, through parental control systems, harmful audiovisual content ought only to be provided in such a way that minors cannot usually access it.

5.1.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 54e para 3 No. 4 of the AMD-G states that the platform provider must ensure that a transparent and easy-to-use procedure is available with which the user can complain to the platform provider about the inadequate implementation of the obligations under Article 54e para 1 or para 3 No. 2.

5.1.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, the proposed legislation, in Article 54e para 3 No. 3 obliges the platform providers to ensure that, in order to sensitise the users on their website, they provide their own offers to increase media literacy in an easily and immediately accessible way. Alternatively, platform providers must refer by means of a clearly visible label and design (on the homepage of the website) to the information provided by the company *Rundfunk und Telekom Regulierungs-GmbH* (RTR-GmbH)¹²³ as well as to related offers from third parties.

¹²³ This company has been set up in order to support KommAustria in fulfilling its legal tasks. The RTR-GmbH forms the business apparatus of KommAustria in the field of electronic audio media and electronic audiovisual media and the administration of funding for media. In doing so, it supports KommAustria under its technical direction and instructions in fulfilling the tasks and goals assigned to KommAustria by law. Its tasks include, for example, administrative support in administrative procedures and informing the public about the activities of KommAustria, professional support in technical, economic and legal matters in proceedings, etc.



5.1.3.12. Forbidding processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, the AMD-G contains no references to this.

5.1.3.13. Other relevant provisions related to the protection of minors

The content offered by the Austrian Broadcasting Corporation (Austrian public service broadcaster) may not contain any content that can seriously impair the physical, mental or moral development of minors, as provided for in Article 10a para 1 of the Public Service Broadcasting Act (ORF-G). Further, Article 10a para 2 of the ORF-G states that, relative to content that can impair the physical, mental or moral development of minors, the Austrian Broadcasting Corporation must ensure through the choice of airtime or other technical measures, such as age verification tools, that such content is usually not seen or heard by minors. Furthermore, programmes that can impair the physical, mental or moral development of minors are to be identified as such at the beginning by means of acoustic signals that can be clearly identified as warnings and are to be made recognisable by optical means throughout the programme by the Austrian Broadcasting Corporation. Finally, the Austrian Broadcasting Corporation must support and contribute to self-regulation initiatives to ensure uniform nationwide behavioural guidelines in this regard, as per Article 10a para 3 of the ORF-G.

Also, Article 44 para 3 of the AMD-G prohibits teleshopping during children's programmes, while Article 39 para 4 obliges media service providers to draw up codes of conduct about how they:

1. provide viewers with sufficient information to assess the potential harm of the provided content and
2. mark content which may impair physical, mental or moral development of minors, by symbols and age information that are easy for the user to understand.

5.1.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

In accordance with Article 35 para 2 of the AMD-G, all media service providers must create guidelines on audiovisual commercial communications about alcoholic beverages before, after, and during children's programmes and must comply with them. The guidelines must contain provisions as to which forms and content of the audiovisual commercial communications are inappropriate. The guidelines are to be published and must be easily, immediately and constantly accessible.



5.1.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The prerequisite for the granting of the full amount of the funds available to promote self-regulation in accordance with Article 33, paragraph 1 of KommAustria-G, is that the behavioural guidelines of a self-regulation institution regulate inappropriate audiovisual commercial communication for alcoholic beverages and audiovisual commercial communication for food and beverages that contain nutrients or substances with nutritional or physiological effects, such as fat, trans fatty acids, salt/sodium and sugar, the excessive consumption of which is not recommended as part of the overall diet. Such a code of conduct should aim to effectively reduce the effects of audiovisual commercial communication for alcoholic beverages on minors and the effects of audiovisual commercial communication for the above-mentioned foods and drinks on children. For the aforementioned foods and beverages, the behavioural guidelines must ensure that their positive nutritional properties are not emphasised. The guidelines must also take into account relevant recommendations of European consumer protection associations in an appropriate balance of interests. Also, these guidelines should take into account recognised nutritional guidelines, particularly with regard to audiovisual commercial communication for the aforementioned foods and beverages. They are to be drawn up with the assistance of the Agency for Health and Food Safety. The regulatory authority KommAustria is to be informed annually by 31 March of the following year about the effectiveness of the rules of the code of conduct as well as about the type, number and resolution of complaints. KommAustria must present its assessment and recommendations on effectiveness in its activity report.

5.1.3.16. Other relevant information

N/A.

5.1.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.



The relevant rules are to be found under 5.1.5.3. below.

5.1.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.1.5.1. Regulatory body

The competent regulatory body for video-sharing platforms is KommAustria.¹²⁴

5.1.5.2. Existence of a registration/notification system

KommAustria is responsible for the administration and handling of regulatory tasks in the field of electronic audio media and electronic audiovisual media.

Article 54c para 4-5 of the AMD-G states that platform providers have to notify KommAustria about their activity no later than 2 months after the commencement of activities. The notification must contain the name, address and the name of any representatives and authorised recipients, and the provider must provide evidence of the requirements for determining the jurisdiction rights. Platform providers must update this information annually and must submit it to the regulatory authority by 31 December each year.

5.1.5.3. Compliance, enforcement and sanctioning powers

For certain reasons (e.g. repeated complaints about the measures taken by a platform provider with regard to Article 54f of the AMD-G); the lack of a reporting and evaluation system according to Article 54e para 1 No. 1 of the AMD-G or a complaint system according to Article 54e para 3 No. 4 of the AMD-G; the lack of terms and conditions; non-compliance

¹²⁴ https://www.rtr.at/medien/wer_wir_sind/KommAustria/KommAustria.de.html.



with the requirements for audiovisual communication; in the event of a suspected serious legal violation (e.g. the availability of prohibited or harmful content in accordance with Article 54d No. 1 of the AMD-G on the VSP), the regulatory authority can *ex officio* initiate a procedure to review the appropriateness of the measures taken by the platform provider to meet the requirements standardised in Article 54e. When assessing the appropriateness and when commissioning suitable precautions, the authority must take into account the fact that the measures required of the platform provider under this Article must not result in a general *a priori* check of the content. The measures, as well as the precautions taken, must be necessary to achieve the intended goals – such as, in particular, increasing the efficiency of the protective mechanisms for users, compliance with minimum standards of audiovisual commercial communication, protecting the general public from prohibited and harmful content and safeguarding the interests of persons individually affected by such content – taking into account the legal interests of the platform provider. They must also be suitable and proportionate.

In addition, when assessing the amount of a fine imposed by the regulatory authority in accordance with Article 54h of the AMD-G, the following circumstances in particular must be taken into account:

1. the gravity and duration of the violation;
2. the financial strength of the platform provider, as can be seen, for example, from its total turnover;
3. the amount of profit made;
4. previous violations by the platform provider.

5.1.5.4. Development of self- or co-regulatory codes or schemes

KommAustria is given EUR 75 000 annually to support the self-monitoring effort with regard to the classification of content that may affect the physical, mental or moral development of minors, as well as to promote self-regulation in audiovisual commercial communication, for audiovisual media service providers. The institution of self-regulation is, in accordance with Article 32a para. 2 of KommAustria-G, to be a body with legal personality that ensures broad representation of the providers concerned and comprehensive transparency with regard to the basis for decisions, procedures and the enforcement of decisions. It should also be a body that provides guidelines on conduct and procedural guidelines that are generally recognised and that clearly define the goals of self-regulation. It needs to ensure that complaints are dealt with effectively and that its decisions are enforced, including the imposition of effective and proportionate sanctions in the event of violations of the code of conduct, etc. In particular, sanctions include: the publication of a decision by the self-regulatory body; the publication of the self-regulatory body's recommendation for future behaviour; the withdrawal of a seal of approval or a positive rating awarded in accordance with the guidelines of the institution. Every four



years, the institution of self-regulation must present the regulatory authority with a report on its structure and working methods, detailing the extent to which it has contributed to the goal of ensuring compliance with minimum standards by the content providers.

5.1.5.5. Out-of-court redress mechanisms for users

Article 54f of the AMD-G stipulates that an arbitration board under the responsibility of the managing director of the media department of RTR-GmbH (which was in existence before the adoption of the revised AVMSD) is responsible for disputes between users and platform providers. Users can file a complaint with the arbitration board about the lack of functionality of (a) the reporting and evaluation system; (b) the system of parental control or age verification used; (c) the tools for marking audiovisual commercial communication; or (d) the complaint system. Furthermore, they can submit the General Terms and Conditions of the platform providers to the arbitration board for assessment of their legal conformity. However, this is only possible if the user has previously contacted the platform provider and the two parties to the dispute have not been able to reach a settlement of the dispute. The arbitration board must bring about an amicable solution by developing a solution proposal or inform the user of its opinion on the case raised.

5.1.5.6. Rights before a court for users

No specific provision of the AMD-G deals with this issue, but it does not prevent users from using regular court mechanisms.

5.1.6. Studies, reports and research

N/A.

5.1.7. Data compilation

This factsheet is based on data compiled by Dr. Harald Karl and Samuel Schuber of Pepelnik&Karl Rechtsanwälte GmbH.



5.2. BE (Flemish community of Belgium) – National legal summary¹²⁵

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the decree amending the decree of 27 March 2009 on radio broadcasting and television (amended Media Decree).

5.2.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Decree of 27 March 2009 on radio broadcasting and television (*Decreet van 27 maart 2009 betreffende radio-omroep en televisie*).¹²⁶
- Decree amending the decree of 27 March 2009.¹²⁷

Secondary legislation:

- Explanatory Memorandum to the decree amending the decree of 27 March 2009 on radio broadcasting and television (*Ontwerp van decreet tot wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie*).¹²⁸

5.2.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

¹²⁵ The factsheet on Belgium (Flemish speaking Community) incorporates feedback received from Dirk Peereman at the Flemish Media Regulator (*Vlaamse Regulator voor de Media*, VRM) during the checking round with the national regulatory authorities.

¹²⁶ Official text,

https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_27_maart_2009_18b.pdf; unofficial English translation, https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_-_engelse_vertaling_bijgewerkt_tot_8_mei_2020.pdf.

¹²⁷ <https://beslissingenvlaamseregering.vlaanderen.be/document-view/5EF1ADC0AD26920008000509>.

¹²⁸ <https://beslissingenvlaamseregering.vlaanderen.be/document-view/5EF1ADC0AD2692000800050C>.



Table 22. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	Yes.
“Dissociable section”	Yes.
“Essential functionality”	Yes.

Source: Flemish community of Belgium’s response to European Audiovisual Observatory standardised survey

5.2.2.1. VSP service

Article 2, 45°/1 of the amended Media Decree defines the term “video-sharing platform service” by transposing the text of the revised AVMSD verbatim, as follows:

video platform service: a service as referred to in Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service, 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.

5.2.2.2. VSP provider

Article 2, 1° of the amended Media Decree defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows:

the natural or legal person who provides a video-sharing platform service.

5.2.2.3. User-generated video

Article 2, 7°/1 of the amended Media Decree defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as well as providing additional understanding of the term by including a reference to “a series of sounds”, as follows:



a set of moving images, with or without sound, [or a series of sounds, intended for the general public or part of it], 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.

5.2.2.4. “Principal purpose” or “dissociable section” of a VSP service

The Explanatory Memorandum (p. 27) provides additional insight into this criterion by focusing on the scope of applicability, as follows:

If a dissociable part of a service constitutes a video-sharing platform for the purposes of the Media Decree, only that part should be subject to the provisions of the Media Decree dealing with video-sharing platforms, and only with regard to programmes and user-generated content. The definition of a video-sharing platform service should not cover non-economic activities such as the provision of audiovisual content on the websites of private individuals and non-commercial groups with common interests.

5.2.2.5. “Essential functionality” of a VSP service

The Explanatory Memorandum (p. 12) provides additional insight into this criterion, with a view to clarifying the concept and its applicability to social media services, by referring to the European Commission’s guidelines on video-sharing platforms, which were issued on 2 July 2020 and read as follows:

For the sake of clarity, effectiveness and consistency in its implementation, the European Commission adopted, after consulting the Contact Committee, “Guidelines for the practical application of the criterion of the essential functionality referred to in the definition of “video platform service” in the Audiovisual Media Services Directive”, which were published on 7 July 2020 in the Official Journal of the European Union. During the assessment whether a particular service can be qualified as a video platform service these guidelines will be applied.

5.2.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.



This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides other additional relevant information about the measures and concepts at stake.

5.2.3.1. General provisions

Article 38 of the Media Decree prohibits any broadcasting activities which incite hatred or violence. This prohibition is amended and expanded by the amended Media Decree. After specifying the prohibition on incitement to violence or hatred, the amended Media Decree further clarifies that the prohibition of discrimination specified in Article 21 of the Charter of Fundamental Rights of the European Union (the Charter)¹²⁹ includes the prohibition of such incitement. The aforementioned Explanatory Memorandum explains that this clarification is made to promote legal certainty and should result in clear rules on the matter. It explains that the notion of “incitement to violence or hatred” should be understood within the meaning of European Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia¹³⁰ through criminal law. In relation to VSPs, a new Article 176/4 is introduced into the amended Media Decree (by Article 37 of the amended Media Decree), defining, in the same manner as for broadcasting, incitement to hatred and violence as follows:

Without prejudice to the application of Articles XII.17, XII.18, XII.19 and XII.20 of the Code of Economic Law, providers of video platform services shall take the necessary appropriate measures to:

1 ° [...]

2 ° protect the general public against programmes, user-generated content and commercial communications that incite violence or hatred against any group of persons or member of a group on the grounds of:

- a) gender;*
- b) race;*
- c) colour;*
- d) ethnic or social origin;*
- e) genetic characteristics;*
- f) language;*
- g) religion or belief;*
- h) political or other views;*
- i) membership of a national minority;*

¹²⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN>.

¹³⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008F0913&from=en>.



- j) property;*
- k) birth;*
- l) disability;*
- m) age;*
- n) sexual orientation.*

The prohibition of incitement in the Media Decree is also amended by the amended Media Decree to cover incitement to terrorism. The MoU explains that the reason for this is that the threat of terrorism is increasingly diverse and spread over a wider geographical area, and remains significant, complex and highly unpredictable. As terrorist messages can be circulated widely at lightning speed through electronic communications networks, it is important to protect the general public against incitement to terrorism. Publicly provoking the commission of a terrorist offence must be understood within the meaning of Directive EU2017/541 of the European Parliament and of the Council on combating terrorism.¹³¹ This description can be found in national law in Article 140bis of the Belgian Criminal Code, which describes the public provocation to commit a terrorist crime as follows:

any person who spreads a message or otherwise makes it publicly available with a view to incite committing one of the crimes referred to in Articles 137 or 140 of the Criminal Code.

The provisions relative to obligations stemming from the revised AVMSD in terms of protecting the general public and in particular minors from certain content are transposed by Article 176/4 of the amended Media Decree.

Article 176/4 stipulates:

1. Without prejudice to the application of Articles XII.17, XII.18, XII.19 and XII.20 of the Code of Economic Law, providers of video platform services shall take the necessary appropriate measures to:

1.° [...]

2 ° [...]

3 ° protect the general public against programmes, user-generated content and commercial communications containing content the dissemination of which involves an activity that is a criminal offence, in particular:

a) public incitement to commit a terrorist offence as referred to in Articles 137 and 140bis of the Criminal Code;

b) offences related to child pornography as set out in Article 383bis of the Criminal Code;

c) offences related to racism and xenophobia as referred to in articles 20 and 21 of the law of 30 July 1981 punishing certain acts motivated by racism or xenophobia.

With regard to the protection of minors, in line with the obligations for all media services, the aforementioned Explanatory Memorandum explains that paragraph 1 of Article 176/4 of the amended Media Decree bans providers of VSP services to offer programmes, user-

¹³¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017L0541&from=EN>.



generated videos or audiovisual commercial communications that could affect the physical, mental or moral development of minors. However, an exception allows providers to offer the proposed harmful content as long as they ensure that minors are not generally able to view it.

In its Article 176/4, the amended Media Decree provides that video-sharing platform service providers must take appropriate measures to protect the general public against content that incites hatred or violence or content whose dissemination constitutes a criminal offence. Such measures must include protecting the public against incitement to commit a crime; a terrorist offence, as defined in Articles 137 and 140bis of the Criminal Code; offences related to child pornography, as defined in Article 383bis of the Criminal Code; and criminal offences relating to racism and xenophobia, as defined in Articles 20 and 21 of the law of July 30, 1981. This law is designed to punish certain acts motivated by racism or xenophobia, as well as those related to the protection of minors. When taking appropriate measures, VSP providers should consider the following elements:

- 1° the nature of the content in question;
- 2° any damage the content may cause;
- 3° the characteristics of the category of persons to be protected;
- 4° the rights at stake and the legitimate interests, as well as the public interest.

Moreover, the appropriate measures also have to be practicable and proportionate and take into account the scope of the VSP service and the nature of the service provided. They should not lead to any prior control measures or filtering when uploading content as this would contravene the provisions of Article XII.20, §1 of the Code of Economic Law.

The MoU provides that it is up to the Flemish Government to determine further rules for the implementation of this article.

5.2.3.2. Adapting terms and conditions of the VSP service to include these obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, Article 176/4, §2, 1° of the amended Media Decree establishes these obligations, without further specifications.



5.2.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 176/4, §2, 1° of the amended Media Decree establishes these obligations, without further specifications.

5.2.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 176/6, §1, 1° of the amended Media Decree establishes these obligations, without further specifications.

5.2.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to the aforementioned Article 176/4 of the amended Media Decree, Article 176/4, §2, 3° of the amended Media Decree establishes these obligations, without further specifications.

5.2.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 176/4, §2, 4° of the amended Media Decree establishes these obligations, without further specifications.



5.2.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 176/4, §2, 5° of the amended Media Decree establishes these obligations, without further specifications.

5.2.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content referred to in Article 176/4 of the amended Media Decree, Article 176/4, §2, 6° of the amended Media Decree establishes these obligations, without further specifications.

5.2.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 176/4, §2, 2° and Article 176/4, §2, 7° of the amended Media Decree establish the obligations to provide programmes, user-generated content and commercial communications containing pornographic images or images of needless violence in an encrypted manner or subject them to effective parental controls, as well as to provide parental control systems managed by the end user of the VSP service for programmes, user-generated content and commercial communications that may affect the physical, mental or moral development of minors.

5.2.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures referred to in Article 176/4 of the amended Media Decree, Article 176/4, §2, 8° of the amended Media Decree establishes these obligations, without further specifications.



5.2.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 176/4, §2, 9° of the amended Media Decree establishes these obligations, without further specifications.

5.2.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 176/4, §2 of the amended Media Decree provides that the personal data of minors collected by providers of video platform services will not be processed for commercial purposes, such as direct marketing, profiling and behavioural advertising, without further specifications.

5.2.3.13. Other relevant provisions related to the protection of minors

N/A.

5.2.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Applicable rules related to commercial communications that may be detrimental to the physical, mental or moral development of minors, as well as qualitative requirements for commercial communications aimed at children, which will also be applicable in the context of VSPs stem from the amended Media Decree. It should be noted that the amended Media Decree makes a distinction between commercial communications that are marketed, sold or arranged by VSP providers and those that are not. Regarding commercial communications that are marketed, sold or arranged by VSP providers, the amended Media Decree proposes a new Article 176/5 of the Media Decree, requiring VSP providers to comply with the requirements for commercial communications, as follows:

Providers of video platform services are free to market, sell or organise commercial communication in any way, with the exception of the restrictions and obligations stated in this decree. For the commercial communications that the providers of video platform services market, sell or organise, they comply with the requirements referred to in Articles 52 to 55, Article 62, Articles 65 to 69, Articles 71 to 77 and Articles 90 to 97.



In relation to Article 176/5 of the amended Media Decree, the Explanatory Memorandum explains the following:

By analogy with the provisions of Article 48 of the Media Decree with regard to broadcasting services, the first paragraph explicitly confirms the principle of freedom to broadcast commercial communications for video platforms as well. However, this freedom is not unlimited. The second paragraph of this provision ensures that providers of video platform services must comply with certain obligations regarding commercial communications that they market, sell or organise. This paragraph is the transposition of Article 28ter of AVMD2010, as amended by Article 1, paragraph 23 of AVMD2018.

As users increasingly rely on VSP services to access audiovisual content, it is necessary to ensure an adequate level of consumer protection and a level playing field between the different players, by appropriately aligning the rules on commercial communications for all providers, i.e. providers of VSP services as well as providers of broadcasting services. It is therefore important that audiovisual commercial communications on video platform services are clearly identified and comply with a set of minimum quality requirements.

For commercial communication on VSP services, rules have already been laid down in the law of 5 June 2007 amending the law of 14 July 1991 on commercial practices and consumer information and protection. The law of 5 June 2007 transposes Directive 2005/29/EC of the European Parliament and of the Council, which prohibits unfair business-to-consumer commercial practices, including misleading and aggressive practices occurring in information society services.

The second paragraph of Article 176/5 of the Media Decree refers to the relevant provisions of the Media Decree that apply to commercial communications that the providers of the video platform services themselves have marketed, sold and organised.

Regarding commercial communications that VSP providers do not market, sell or arrange, Article 176/6 of the amended Media Decree determines that VSP providers have to take appropriate measures to ensure that these commercial communications also comply with the requirements of the Media Decree, including concerning commercial communications that may be detrimental to the physical, mental or moral development of minors:

The providers of video platform services shall take the following appropriate measures for the commercial communications that they do not market, sell or organise to comply with the requirements referred to in Articles 52 to 55, Article 62, Articles 65 to 69, Articles 71 to 77 and 90 to 101:

1 ° include the regulations stated in Articles 52 to 55, Article 62, Articles 65 to 69, Articles 71 to 77 and 90 to 101 in the conditions of the video platform services and apply those regulations;



2 ° provide a feature that allows users who upload user-generated content to indicate that such content contains commercial communications, provided they know or could reasonably be expected to know;

3 ° establish and use transparent and user-friendly mechanisms by which the users of a videoplatform service can report or mark commercial communications offered on the VSP service to that provider;

4 ° establish and use systems with which the provider of a video platform service can explain to the users of that video platform service what action has been taken on the reports and markings stated in point 3 °;

5 ° establish and use age verification systems for users of video platform services for commercial communication offered on the video platform service that may affect the physical, mental or moral development of minors;

6 ° establish and operate easy-to-use systems allowing users of video platform services to rate the commercial communications offered on video-sharing platform services;

7 ° provide parental control systems managed by the end user of the video platform service for programmes, user-generated content and commercial communications that may affect the physical, mental or moral development of minors;

8 ° establish and use transparent, easy-to-use and effective procedures to handle and resolve complaints from the users of the video platform services to the provider of video platform services about the implementation of the measures stated in points 3 ° to 7 °. to act;

9 ° provide effective measures and instruments in the field of media literacy and increase users' awareness of those measures and instruments.

The Explanatory Memorandum explains the following about the proposed Article 176/6:

However, an important part of the content offered on VSPs does not fall under the editorial responsibility of the providers of the VSP services. This does not mean that the providers of VSP services do not have to take measures with regard to this content. Usually the providers of VSP services determine the manner of organising the content, including by automatic means or algorithms. Article 176/6 of the Media Decree contains the measures that providers of VSP services must take with regard to commercial communications that they have not marketed, sold or organised themselves.



5.2.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The Media Decree prohibits commercial communications for alcoholic beverages being aimed specifically at minors or showing minors consuming alcohol. Also, commercial communication aimed at children and young people may not encourage or trivialise the excessive intake of food and beverages containing nutrients of which immoderate use is not recommended, such as fats, trans-fatty acids, salt or sodium and sugars. This includes a more detailed standard, as commercial communication relating to candy which contains sugar has to display a stylised image of a toothbrush in a clear and contrasting manner for the duration of the commercial communication, respecting a size limitation of one tenth of the height of the film image.

These requirements are qualitative requirements mentioned in Article 176/5 of the amended Media Decree, meaning that VSP providers are legally obliged to ensure that commercial communications for alcoholic beverages that are marketed, sold or arranged by them are not specifically aimed at minors or do not show minors consuming alcohol. For commercial communications that are not marketed, sold or arranged by those VSP providers, they will have to take the appropriate measures to ensure compliance with this requirement, as mentioned in the proposed Article 176/6 §1 of the Media Decree.

5.2.3.16. Other relevant information

N/A.

5.2.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

Article 176/6 of the amended Media Decree indeed takes into consideration the principle of proportionality, as Articles 176/4, §3 and 176/6, §2 prescribe that the appropriate measures also have to be practicable and proportionate and should not lead to



any prior control measures or filtering when uploading content which would not be in compliance with the provisions set out in Article XII.20, §1 of the Code of Economic Law.

Further, Article 176/6, §2 second paragraph states that the size of the VSP is to be considered, together with the nature of the service (Articles 176/4, §3 second paragraph and 176/6, §2, second paragraph of the amended Media Decree). The nature of the content is provided for in Articles 176/4, §3 1° and 176/6, §2 2° of the amended Media Decree.

Other criteria are found in Article 176/4, §3 2° of the amended Media Decree in terms of the harm the content may cause, followed by the characteristics of the category of persons to be protected (Articles 176/4, §3 3° and 176/6, §2 2°) and the rights at stake, the legitimate interests, and the public interest (Articles 176/4, §3 4° and 176/6, §2 3° of the amended Media Decree).

The Explanatory Memorandum provides that the Flemish Government is to provide further rules for the implementation of this article.

5.2.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as to the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.2.5.1. Regulatory body

The competent regulatory body for VSPs is the *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media - VRM).¹³²

5.2.5.2. Existence of a registration/notification system

VSP providers have to notify their services to the VRM. This notification shall be done 14 days prior to the launch of the service and must contain administrative information

¹³² <http://www.vlaamseregulatormedia.be>.



regarding the provider. Any change to this information must also be notified to the VRM in a separate notification procedure.

Article 176/2 of the amended Media Decree reads as follows:

The provider of video platform services informs the Flemish Regulator for the Media of the provision of video platform services at least fourteen calendar days before the start of the service. The notification is made in accordance with Article 219 and contains at least the following information:

1 ° all data that can be used to determine whether the Flemish Community is the competent authority for the video service providers in question;

2 ° the articles of association;

3 ° a clear description of the service to be provided.

The Flemish Government shall determine what further information must be provided and included in the notification, as well as any subsequent changes to that information that must be communicated to the Flemish Regulator for the Media.

Providers who on the date of entry into force of this decree already offer video platform services, shall submit the notification, stated in the second paragraph, no later than six months after the Flemish Government has determined what further information is to be provided and included in the notification, as well as any subsequent changes to that information that must be communicated to the Flemish Regulator for the Media.

If providers of video platform services expand their offer with a new type of service, they must inform the Flemish Regulator for the Media of this in a separate notification.

After notification, providers of video platform services shall notify the Flemish Regulator for the Media of any change in the information stated in the second paragraph as soon as possible.

5.2.5.3. Compliance, enforcement and sanctioning powers

Compliance with the regulatory framework is entrusted to the VRM via the Monitoring Framework Decision of 30 May 2010, which, at the time of writing this report, has not yet been amended. The Explanatory Memorandum to the amended Media Decree explains that the Media Decree has been amended so as to include VSPs within the scope of the current enforcement and sanctioning powers.

5.2.5.4. Development of self- or co-regulatory codes or schemes

In line with the text of the revised AVMSD, which puts strong emphasis on the development of self- and co-regulatory schemes related to implementation of the obligations of VSPs,



Article 176/8 of the amended Media Decree provides for the VRM's responsibility to assess these schemes in the following manner:

[...] This article empowers the Flemish Regulator for the Media to ensure that the providers of video platform services take the appropriate measures in accordance with Articles 176/4 to 176/7 and also apply them. This article transposes Article 28ter, paragraph 5 of AVMSD2010. Article 28ter, paragraph 5 was inserted in AVMD2010 by Article 1, paragraph 23 of AVMSD2018. Article 28ter, paragraph 5 of AVMSD2010 reads as follows: “Member States shall establish the necessary mechanisms to assess the appropriateness of the measures taken by video-sharing platform providers, as referred to in paragraph 3. Member States shall entrust national regulatory authorities or bodies with the assessment of those measures.

It should be noted that the national legal framework already included self-regulatory measures for commercial communications which also apply to VSPs and users of VSPs, under the Belgian self-regulatory organisation of the advertising industry, namely the *Jury voor Ethische Praktijken inzake Reclame* (Jury for Ethical Practices in Advertising - JEP),¹³³ based on the relevant legislation, but also the self-regulatory codes, the first of which is the ICC Code (International Chamber of Commerce).

5.2.5.5. Out-of-court redress mechanisms for users

No specific provision of the amended Media Decree deals with this issue.

5.2.5.6. Rights before a court for users

No specific provision of the amended Media Decree deals with this issue, but nothing prevents users from asserting their rights before a court.

5.2.6. Studies, reports and research

The following reports have been prepared in relation to the transposition of the revised AVMSD:

- Advice for the Children's Rights Commissioner on the implementation of AVMD2018 and amendments to the Flemish Media Decree (*Audiovisuele mediariichtlijn*)

¹³³ <https://www.jep.be/nl>.



opportuniteit voor ambitieus mediadecreet met oog voor minderjarigen en hun rechten),¹³⁴ 11 March 2020.

- Note to the Flemish Government concerning the amended Media Decree (*Nota aan de Vlaamse Regering*),¹³⁵ 26 June 2020.
- Opinion of the SARC Media (Advisory body to the minister of Media) on the amended Media Decree (*Advies wijziging Mediadecreet: gedeeltelijke omzetting AVMD-richtlijn*),¹³⁶ 17 July 2020.
- Centre for IT and IP Law, KU Leuven: Review of the Audiovisual Media Services Directive: About Porsches and donkey wagons in times of convergence (*Herziening van de Richtlijn Audiovisuele Mediadiensten: Over Porsches en ezelswagens in tijden van convergentie*),¹³⁷ 2019.

5.2.7. Data compilation

This factsheet is based on data compiled by Valerie Verdoodt, Fellow in Law at the London School of Economics (LSE, UK) and an affiliated postdoctoral researcher at both Ghent University and KU Leuven (Belgium).

¹³⁴ https://www.kinderrechtencommissariaat.be/sites/default/files/bestanden/advies_2019_2020_08_audiovisuele_mediariichtlijn.pdf.

¹³⁵ <https://beslissingenvlaamseregering.vlaanderen.be/document-view/5EF1ADC0AD2692000800050B>.

¹³⁶ https://cjsm.be/sarc/SR_media/adviezen/20200717_Advies_wijziging_Mediadecreet_n.a.v._AVMD2018.pdf.

¹³⁷ https://explore.lib.uliege.be/discovery/fulldisplay/alma9920708647502321/32ULG_INST:MOSA.



5.3. BE FR – French-speaking community of Belgium – National legal summary¹³⁸

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the Audiovisual Media Services and Video-Sharing Platforms Act (the Act).

5.3.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Audiovisual Media Services and Video-Sharing Platforms Act (*Décret relatif aux services de médias audiovisuels et aux services de partage de vidéos*).¹³⁹

5.3.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 23. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	Yes.

¹³⁸ The factsheet on Belgium (French speaking Community) incorporates feedback received from Bernardo Herman, Director of European Affairs at CSA during the checking round with the national regulatory authorities.

¹³⁹ Published in French (with a Dutch translation) in the official gazette *Moniteur belge*, 26 March 2021, p. 29036.



“Essential functionality”	Yes.
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Source: French-speaking community of Belgium response to European Audiovisual Observatory standardised survey

5.3.2.1. VSP service

Article 1.3-1., 54° of the Act provides for the definition of a VSP service fully in line with the wording of the revised AVMSD, as follows:

a service whose main purpose or a severable part thereof or an essential function thereof is the communication to the public, via electronic communications networks, of television or sound programmes, user-generated videos, or both, which are not under the editorial responsibility of the video-sharing service provider, for the purpose of information, entertainment or education and the organisation of which is determined by the video-sharing service provider, in particular by automatic means or algorithms, in particular display, tagging and sequencing.

5.3.2.2. VSP provider

Article 1.3-1., 16° of the Act directly transposes the definition from the revised AVMSD, as follows: “the natural or legal person who provides a video-sharing service”.

5.3.2.3. User-generated video

Article 1.3-1., 63° of the Act provides for a definition corresponding to the one given by the revised AVMSD, as follows:

a set of moving images, whether or not combined with sound, constituting a single item of any length that is created by a user and uploaded to a video-sharing service by that same user or by another user.

The commentary on the provisions of the Act gives the following complementary clarification:

The CSA (Conseil Supérieur de l’Audiovisuel) shall determine, in the context of the exercise of its discretionary powers with regard to the legal classification of services, the criteria for distinguishing, in a video-sharing service, the notion of “user-created video” from that of “audiovisual media service”. The uploading and broadcasting by a user, in a video-sharing service, of several videos created by himself or another user is likely to result in the creation of a catalogue of programmes under the responsibility of an audiovisual media service publisher.



5.3.2.4. “Principal purpose” or “dissociable section” of a VSP service

The commentary on the provisions of the Act gives the following complementary clarification:

The dissociated part of a service offering different types of services will also qualify as a video-sharing service. The main purpose requirement should thus also be presumed to be met if the form and audiovisual content of the service in question can be dissociated from the main activity of the service provider, for example stand-alone elements of online newspapers offering programmes and/or videos created by the user where these elements can be considered dissociable from the main activity. A service should be regarded as merely an indissociable complement to the main activity because of the links between the audiovisual offer and the main activity, such as the provision of information in written form. Video clips incorporated in the editorial content of electronic versions of newspapers and magazines and animated images, such as GIFs, are thus not covered by the definition.

5.3.2.5. “Essential functionality” of a VSP service

The commentary on the provisions of the Act gives the following complementary clarification:

It should be noted that social media services could also be qualified as video-sharing services if the provision of user-created programmes and videos is an essential feature of the service. The provision of programmes and/or user-generated videos may be considered to be an essential feature of a social media service if the audiovisual content is not merely incidental or a minor part of the activities of that social media service.

5.3.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.



5.3.3.1. General provisions

While there are no definitions of terms such as that relating to content inciting violence or hatred, provisions relative to the obligations of VSP providers in Article 2.3-1 of the Act include:

Service providers may not provide any programme or broadcast any commercial communication:

- 1° contrary to laws, decrees, regulations or the general interest;
- 2° offensive to human dignity;
- 3° containing public provocation to commit a terrorist offence as referred to in Article 137 of the Criminal Code;
- 4° favouring a current of thought, belief or opinion constituting a threat to democracy, fundamental rights and freedoms guaranteed by the Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms or aiming to abuse the credulity of the public;
- 5° tending to deny, minimise, justify or approve the genocide committed by the German National Socialist regime during the Second World War, or any other form of genocide;
- 6° constituting offences relating to racism and xenophobia covered by the Act of 30 July 1981 to suppress certain acts inspired by racism and xenophobia;
- 7° constituting offences relating to child pornography, within the meaning of Article 383bis of the Criminal Code.

Further, Article 2.3-2 of the Act states that:

§ 1 Any provider of video-sharing services must take appropriate measures to protect the user of programmes and videos created by the user in the situations referred to in Article 2.3-1.

Paragraph 2 of the same article details the measures referred to in paragraph 1 as follows:

The measures referred to in paragraph 1 shall consist of

- 1° including the measures referred to in paragraph 1 in the general terms of use of the video-sharing service;
- 2° providing the user with a system for reporting to the video-sharing service provider, according to a simple classification, the content referred to in Article 2.3-1, and informing the user of the action taken by the provider as a result of this reporting;
- 3° making available to the user a procedure for handling and resolving complaints relating to the implementation of the measure referred to in 2°;
- 4° taking media education measures by making the user aware of them.

Article 2.5-2. of the Act further obliges VSP providers to take appropriate measures to protect minors, as follows:



§ 1. Any provider of video-sharing services shall take appropriate measures to protect minors from programmes and user-created videos that may be harmful to their physical, mental or moral development, ensuring that such content is only made available to the user in such a way that minors cannot normally hear or see it.

Paragraph 2 of the same article details the measures referred to in paragraph 1 as follows:

The measures referred to in paragraph 1 shall consist of:

1° including the measures referred to in paragraph 1 in the general terms of use of the video-sharing service;

2° making available to users a system for flagging content according to a simple classification when they are uploading a content as referred to in paragraph 1 to the video-sharing service;

3° providing the user with a system for reporting to the video-sharing service provider, according to a simple classification, the content referred to in paragraph 1, and informing the user of the action taken by the provider as a result of this reporting;

4° setting up a system to verify the age of the user and establish parental controls over which the user has control;

5° making available to the user a procedure for handling and resolving complaints relating to the implementation of the measure referred to in 2°;

6° taking media education measures by making the user aware of them.

5.3.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in section 1.1.3.1, Article 2.5-2. § 1 and § 2 of the Act stipulates:

§ 1. Any provider of video-sharing services shall take appropriate measures to protect minors from programmes and user-created videos that are likely to harm their physical, mental or moral development, ensuring that such content is only made available to the user in such a way that minors cannot normally hear or see it.

§ 2 The measures referred to in paragraph 1 shall consist in

1° including the measures referred to in paragraph 1 in the general terms of use of the video-sharing service;

...

The video-sharing service provider shall ensure that these measures are transparent, user-friendly, simple to use and effective.



5.3.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 5.5-1 of the Act states that:

§ 2. Where the commercial communication is not organised by the video-sharing service provider, the latter must take appropriate measures to comply with the requirements referred to in paragraph 1.

These measures shall consist of:

1° including the measures defined in accordance with paragraph 1 in the general terms of use of the video-sharing service.

5.3.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 5.5-1., §2, 2° and 3° of the Act provides for these obligations in line with the revised AVMSD, as follows:

§2 Where the commercial communication is not organised by the video-sharing service provider, the latter must take appropriate measures to comply with the requirements of paragraph 1.

These measures shall consist of

...

2° providing a system for the user uploading a user-created video to the video-sharing service to declare whether this content contains, to the user's knowledge or to the extent that the user may reasonably be expected to know, commercial communication;

3° informing the user in a clear manner about the programmes and videos created by the user containing commercial communication which have been declared pursuant to the measure under 2° or of which the user has knowledge.



5.3.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the VSP provider, Article 2.5-2., §2, 2° and 3° of the Act directly transposes the obligations stemming from the revised AVMSD:

§2 The measures referred to in paragraph 1 shall consist of

...

2° providing the user uploading content referred to in paragraph 1 to the video-sharing service with a system for reporting such content according to a simple classification;

3° providing the user with a system enabling him to report the content referred to in paragraph 1 to the video-sharing service provider, according to a simple classification, and informing him of the action taken by the provider in response to this report.

5.3.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the same provisions found in Article 2.5-2., §2, 2° and 3° of the Act apply (please see under 5.2.3.5.).

5.3.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 2.5-2., §2, 4° of the Act provides for this obligation, as follows:

§ 2 The measures referred to in paragraph 1 shall consist of

...

4° setting up a system for verifying the age of the user and establishing parental control over which the user has control.



5.3.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 2.5-2., §2, 2° and 3° of the Act stipulate this obligation in the same manner as provided for under 5.1.3.5. and 5.1.3.6.

5.3.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, the same provisions found in Article 2.5-2., §2, 4° of the Act apply (please see under 5.2.3.7.).

5.3.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 2.5-2., §2, 5° of the Act provides for this obligation:

5° making available to the user a procedure for the handling and resolution of complaints relating to the implementation of the measures referred to in 2° to 4°.

5.3.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 2.5-2., §2, 6° of the Act provides for:

§ 2 The measures referred to in paragraph 1 shall consist of

...

6° taking measures to educate users about the media.



5.3.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 2.5-2., § 3 of the Act establishes these obligations in the following manner:

§ 3 The processing of personal data of minors collected or generated by video-sharing service providers in the context of the application of the measures referred to in paragraph 2 must comply with the conditions and obligations laid down by European Union law and by the relevant Belgian legislation and may not be used for commercial purposes, such as canvassing, profiling and advertising based on behavioural targeting.

5.3.3.13. Other relevant provisions related to the protection of minors

The decree of the Government of the French Community of 20 February 2013 on the protection of minors against television programmes likely to harm their physical, mental or moral development provides for the classification of AVMS programmes in age categories (only applicable to audiovisual media service providers).

5.3.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 5.2-3., 2° to 5° of the Act states that:

Commercial communication must not be physically, mentally or morally harmful to minors and must in particular respect the following criteria for their protection:

...

2° it shall not directly exhort minors to buy or rent a product or service by exploiting their inexperience or credulity;

3° it must not directly incite minors to persuade their parents or third parties to buy the products or services concerned;

4° it must not exploit the special trust minors have in their parents, teachers or other persons;

5° it shall not, without reason, present minors in a dangerous situation.

5.3.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

Article 5.2-3. 1° of the Act states that:



Commercial communication must not be physically, mentally or morally harmful to minors and must in particular respect the following criteria for their protection:

1° it may not encourage excessive use of food and drink products containing trans-fatty acids, salt, sodium or sugars, the regular consumption of which is inadvisable for health; the Advisory Committee of the CSA shall draw up and update one or more codes of conduct allowing for the establishment of guidelines based on best practices designed to ensure compliance with this point.

5.3.3.16. Other relevant information

N/A.

5.3.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

The Act takes into account the size of the VSP, the nature of the service and the content, as well as other criteria, such as possible prejudice, persons to protect, rights and interests, public interest and illegal content. Article 2.3-2., § 5 of the Act states that:

Appropriate measures must take into account the nature of the content in question, the harm it could cause, the characteristics of the category of persons to be protected and the rights and legitimate interests at stake, including those of the providers of video-sharing platforms and those of the users who created the content or uploaded it, as well as the general public interest.

The most harmful content is subject to the strictest access control measures.

They shall be proportionate, taking into account the size of the video-sharing platform service and the nature of the service provided, and shall not entail ex ante control measures or filtering of content at the moment of uploading which are not in conformity with Article 15 of Directive 2000/31/EC.

The same applies relative to the protection of minors, where Article 2.5-2., § 5 of the Act stipulates that:



Appropriate measures must take into account the nature of the content in question, the harm it could cause, the characteristics of the category of persons to be protected and the rights and legitimate interests at stake, including those of the providers of video-sharing platforms and those of the users who created the content or uploaded it, as well as the general public interest.

The most harmful content, such as pornography and gratuitous violence, is subject to the strictest access control measures.

They shall be proportionate, taking into account the size of the video-sharing platform service and the nature of the service provided, and shall not entail ex ante control measures or filtering of content at the moment of uploading which are not in conformity with Article 15 of Directive 2000/31/EC.

As for commercial communications, Article 5.5-1., § 4 of the Act provides for the same considerations:

Appropriate measures must take into account the nature of the content in question, the harm it could cause, the characteristics of the category of persons to be protected and the rights and legitimate interests at stake, including those of the providers of video-sharing platforms and those of the users who created the content or uploaded it, as well as the general public interest.

The most harmful content is subject to the strictest access control measures.

They shall be proportionate, taking into account the size of the video-sharing platform service and the nature of the service provided, and shall not entail ex ante control measures or filtering of content at the moment of uploading which are not in conformity with Article 15 of Directive 2000/31/EC.

5.3.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as to the development of self- or co-regulatory codes and schemes, provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).



5.3.5.1. Regulatory body

The competent regulatory body is the *Conseil Supérieur de l'Audiovisuel* (CSA).¹⁴⁰

5.3.5.2. Existence of a registration/notification system

The Act extends the mandate of the CSA to include VSPs and, in Article 3.3-1, provides for the mandatory notification and the data to be provided by the VSP, as follows:

§ 1. The provider of video-sharing services must make a prior declaration to the CSA by registered post for each of the services it intends to provide.

§ 2 The declaration shall include the following data

1° the name of the provider and the video-sharing service;

2° the address of the head office of the video-sharing service provider and, if the provider is not established in the French-speaking region or in the bilingual region of Brussels-Capital, the address of the parent undertaking, the subsidiary undertaking or an undertaking of the same group within the meaning of Article 1.1-4, § 5;

3° the organisation of the group comprising the undertakings referred to in 2°;

4° the articles of association of the video-sharing service provider if the latter is constituted as a legal person;

5° the description of the video-sharing service;

6° a description of the appropriate measures referred to in sections 2.3-2, 2.4-2, 2.5-2, 5.5-1 that are taken by the video-sharing service provider;

7° the date on which the video-sharing service is accessible;

8° the terms and conditions for marketing this service.

Any change to these elements must be notified in advance to the CSA.

§ 3 The CSA shall draw up the declaration form in accordance with paragraph 2.

5.3.5.3. Compliance, enforcement and sanctioning powers

The Act includes the mandate for the CSA to assess the appropriateness of obligatory measures concerning VSPs, in Articles 2.3-2, § 5 relative to illegal content, 2.5-2, § 5 relative to the protection of minors and 5.5-1, § 4 relative to commercial communications, by providing as follows: “The CSA shall assess the appropriateness of the measures referred to in this Article which are taken by providers of video-sharing services.”

¹⁴⁰ <https://www.csa.be/>.



Article 2.3-2 of the Act, relative to illegal content, provides for further measures available to the CSA, as follows:

§ 5 (...) If, after this assessment, the CSA concludes that inappropriate measures have been taken, it shall invite the video-sharing service provider to adopt appropriate corrective measures within a period of time which it shall determine. In the event of non-compliance with the decision of the CSA, the latter may impose one of the sanctions provided for in Article 9.2.2-1.

This is found to be the case relative to obligations concerning the protection of minors, as stipulated by Article 2.5-2:

§ 5 (...) If, after this assessment, the CSA concludes that inappropriate measures have been taken, it shall invite the video-sharing service provider to adopt appropriate corrective measures within a period of time which it shall determine. In the event of non-compliance with the decision of the CSA, the latter may impose one of the sanctions provided for in Article 9.2.2-1.

Finally, this also applies in relation to advertising, as stipulated by Article 5.5-1:

§ 4 (...) If, following this assessment, the CSA concludes that inappropriate measures have been taken, it shall invite the video-sharing service provider to adopt appropriate corrective measures within a period of time which it shall determine. In the event of non-compliance with the decision of the CSA, the latter may impose one of the sanctions provided for in Article 9.2.2-1.

5.3.5.4. Development of self- or co-regulatory codes or schemes

Article 2.3-2 of the Act provides for self-regulatory schemes regarding illegal content:

§ 4 Detailed rules concerning the measures referred to in this Article may be laid down in a code of conduct or in a regulation of the CSA Advisory Board referred to in Article 9.1.2-1, § 1, 1° and 2°.

A similar scheme is applicable for the protection of minors, in Article 2.5-2:

§ 4 Detailed rules concerning the measures referred to in this Article may be laid down in a code of conduct or in a regulation of the CSA Advisory Board referred to in Article 9.1.2-1, § 1, 1° and 2°.

as well as for advertising, as stipulated in Article 5.5-1:

§ 3 Detailed rules relating to the measures referred to in this Article may be laid down in a code of conduct or in a regulation of the CSA Advisory Board referred to in Article 9.1.2-1, § 1, 1° and 2°.



The co-regulatory codes had not yet been adopted at the time of preparing this factsheet.

5.3.5.5. Out-of-court redress mechanisms for users

All citizens are able to submit a complaint to the CSA, including those relating to VSPs.

5.3.5.6. Rights before a court for users

No specific provision of the Act deals with this issue, but nothing prevents users from asserting their rights before a court, as stipulated by Belgian federal-level legislation.

5.3.6. Studies, reports and research

- Opinion of the advisory board of the CSA in relation to the Act.¹⁴¹
- Parliamentary documentation of the French Community in relation to the Act.¹⁴²

5.3.7. Data compilation

This factsheet is based on data compiled by François Jongen, professor at the Université Catholique de Louvain.

¹⁴¹ <https://www.csa.be/document/avis-relatif-a-lavant-projet-de-decret-sur-les-services-de-medias-audiovisuel/>.

¹⁴² <https://www.pfwb.be/le-travail-du-parlement/doc-et-pub/documents-parlementaires-et-decrets/dossiers/001679298>.



5.4. BG – Bulgaria – National legal summary¹⁴³

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) is to be transposed into the draft law for the amendment of the Radio and Television Act (the draft Law).

5.4.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft law for the amendment of the Radio and Television Act, RTA (*ЗАКОН за изменение и допълнение на Закона за радиото и телевизията*).¹⁴⁴
- Criminal Code (*Наказателен кодекс*).¹⁴⁵

5.4.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

¹⁴³ The factsheet on Bulgaria incorporates the feedback received from the Council for Electronic Media (CEM) during the checking round with the national regulatory authorities.

¹⁴⁴ <http://mc.government.bg/page.php?p=141&s=737&sp=0&t=0&z=0>

¹⁴⁵ <https://lex.bg/laws/ldoc/1589654529>.



Table 24. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Bulgarian response to European Audiovisual Observatory standardised survey

5.4.2.1. VSP service

Article 2, paragraph 6 of the draft Law defines the term “video-sharing platform service” by transposing the text of the revised AVMSD verbatim, as follows:

A service on a platform for sharing videos is a service within the meaning of Art. 56 and 57 of the Treaty on the Functioning of the European Union, the main purpose of the service or a separate part of it or essential functionality of the service is dedicated to the provision of broadcasts, user-generated videos, or both, to the general public, for which the provider of the video-sharing platform is not editorially responsible for the purpose of informing, entertaining or educating, through electronic communications networks within the meaning of the Electronic Communications Act, and whose organisation is determined by the provider of the video-sharing platform, including through automatic means or algorithms, in particular by displaying, marking and arranging in a certain order (sequencing).

5.4.2.2. VSP provider

Article 4 of the draft Law defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: A video-sharing platform service provider is a natural or legal person that provides a video-sharing platform service.

5.4.2.3. User-generated video

Article 2, paragraph 7 of the draft law defines user-generated video, by transposing the text of the revised AVMSD verbatim, as follows:

A user-generated video is a series of moving images with or without sound, which is a separate element, regardless of its duration, created by a user and uploaded to a video-sharing platform by that user or any other user.



5.4.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.4.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.4.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member-states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides other additional relevant information about the measures and concepts at stake.

5.4.3.1. General provisions

Prohibitions related to discrimination, incitement to hatred and the protection of minors stem from legislative acts other than media legislation (such as the Criminal Code, the Law on Protection against Discrimination, etc.), but also from the Radio and Television Act (RTA) which provides for the prohibition of incitement to hatred, as well as the protection of minors relative to any content that risks the impairment of their physical, mental, moral and/or social development applicable to all audiovisual media service providers.

In terms of the obligations of VSPs, relevant provisions stem directly from those envisaged by the AVMSD and include:

Article 19e:

(1) Without prejudice to the application of Art. 13-17 of the E-Commerce Act, providers of video-sharing platforms shall take appropriate measures:



1. to protect children from broadcasts, user-generated videos and audiovisual commercial messages, which may harm their physical, mental, moral and/or social development, in accordance with Article 17a, para. 1-3;

2. to protect the audience from user-generated videos and audiovisual commercial communications the content of which incites violence or hatred against a group of persons or a member of a group, on any of the grounds set out in Article 21 of the Charter of Fundamental Rights of the European Union;

3. to protect the audience from user-generated programmes, videos and audiovisual commercial messages with content, the distribution of which constitutes a crime according to the Penal Code - public incitement to commit terrorist offences, crimes related to child pornography and crimes related to racism and xenophobia.

(...)

(5) The providers of video-sharing platforms undertake to comply with the norms of the National Ethical Rules for Advertising and Commercial Communication, developed by the National Council for Self-Regulation Association, including but not limited to effectively reducing the exposure of children to commercial messages for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular containing fats, trans-fatty acids, salt or sodium and sugars, the excessive intake of which in the diet is not recommended.

(6) Providers of video-sharing platforms shall determine appropriate measures to achieve the objectives of this Article, according to the nature of the content concerned, the harm it may cause, the characteristics of the category of persons to be protected and those set out in risk rights and legitimate interests, including those of video-sharing platform providers and users who have created or uploaded content, and in the interest of the audience.

(7) The measures under par. 6 shall be applicable and proportionate, taking into account the size of the service of the video-sharing platform and the nature of the service provided. These measures cannot lead to preliminary control or filtering of the upload of content that does not comply with Art. 17 of the Electronic Commerce Act.

(...)

(9) The personal data of children, collected or received in another way by the providers of platforms for sharing videos according to para. 8, items 4 and 6, shall not be processed for commercial purposes such as direct marketing, profiling and behaviour-oriented advertising.

(...)

(11) When imposing measures that are more detailed or more stringent than the measures referred to in Article 28b (3) of Directive 2010/13/EU, as amended by Directive (EU)



2018/1808 to providers of video-sharing platforms, the requirements laid down in the applicable Union law shall be complied with.

(12) Self-regulation is encouraged through codes of conduct of the European Union according to Art. 4b. Video-sharing platform providers are encouraged to share best practices on codes of conduct in the area of co-regulation.

(13) Notwithstanding the application of this law by the Council for Electronic Media, the users of the video-sharing platforms may defend their rights before a court in respect of the providers of video-sharing platforms in accordance with para 1 and para 6-8.

(14) Self-regulation shall be encouraged through codes of conduct of the European Union according to Art. 4b. Video-sharing platform providers are encouraged to share best practices on codes of conduct in the area of co-regulation.

5.4.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, the proposed legislation, in Article 19e establishes these obligations, as well as the obligation for such measures to be agreed with the national media regulatory body, in the following manner:

Article 19e:

(10) Providers of video-sharing platforms shall draw up general terms and conditions, which shall be agreed with the Council for Electronic Media for compliance with the provisions of this Article. They must contain the measures under para. 6 (appropriate measures – B.Z., l.l.), which guarantees:

- 1. the observance of the requirements indicated in para. 1;*
- 2. the impartial settlement of disputes between suppliers and consumers through an out-of-court mechanism, without depriving consumers of the legal protection provided by national law;*
- 3. the observance of the requirements under Art. 75, para. 1, and para. 4-9 in respect of commercial communications that are not organised and positioned by the provider of a sharing platform.*



5.4.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 19e 2) of the draft Law stipulates that VSP providers shall observe the requirements in respect of the audiovisual commercial communications which they organise and position. They shall also observe the requirements related to commercial communications that are not organised and positioned by the VSP provider and shall draw up general terms and conditions, which shall be agreed with the regulatory authority.

5.4.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 19e of the draft Law stipulates these obligations in line with the text of the AVMSD, as follows:

(3) The providers of video-sharing platforms shall take appropriate measures for observance of the requirements determined in Art. 75, para. 1 and para. 4-9 requirements for audiovisual commercial communications that are not organised and positioned but are generated by users, taking into account the limited control exercised by video-sharing platforms over these audiovisual commercial communications.

(4) The providers of video-sharing platforms shall clearly inform the users of the broadcasts and the videos generated by users, containing audiovisual commercial messages, when the users have declared according to para. 8, item 1, that these messages contain audiovisual commercial messages or when this fact is known to the supplier.

5.4.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in Article 32, paragraph 5 of the RTA provides for the regulatory authorities to adopt the criteria for assessment of content that is unfavourable or that creates a risk of harm to the physical, mental, moral and/or social development of children, via a general



administrative act. Article 19e (8) of the draft Law uses the language of the AVMSD and stipulates that these measures may consist of:

.... 2. transparent and easy-to-use mechanisms for the users of a video-sharing platform, through which to signal or warn the provider of the video-sharing platform regarding the content indicated in para. 1 provided on its platform.

5.4.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the proposed legislation, Article 19e (8) of the RTA stipulates the obligation just as text of AVMSD provide for, in terms of:

3. systems through which the providers of video-sharing platforms explain to the users of these platforms what are the results of the signals and warnings.

5.4.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 19e (8) of the draft Law transposes this obligation verbatim:

4. systems for verifying the age of users of video-sharing platforms in relation to content that may impair the physical, mental or moral development of children.

5.4.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 19e (8) of the draft Law transposes this obligation verbatim:

5. easy-to-use systems that allow users of video-sharing platforms to evaluate the content according to paragraph 1.



5.4.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 19e (8) of the draft Law transposes these obligations verbatim, as follows:

...6. parental control systems which are controlled by end-users in respect of content which may impair the physical, mental or moral development of children.

5.4.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in 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, the draft Law, in Article 19e (8), transposes the obligations verbatim:

...7. transparent, easy-to-use and effective procedures for reviewing and deciding on user complaints to the provider of a video-sharing platform in connection with the implementation of the measures referred to in items 2–6.

5.4.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, the proposed legislation establishes these obligations in Article 19e (8) of the draft Law by transposing the text of the revised AVMSD verbatim:

... 8. effective measures and tools for media literacy and raising consumer awareness of these measures and tools.

5.4.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by video-sharing platform providers for commercial purposes, such as direct marketing,



profiling and behaviourally targeted advertising, the draft Law, in Article 19e (9), transposes the obligations verbatim and reads:

The personal data of children, collected or received in another way by the providers of platforms for sharing videos according to para. 8, items 4 and 6, shall not be processed for commercial purposes such as direct marketing, profiling and behaviour-oriented advertising.

5.4.3.13. Other relevant provisions related to protection of minors

The Child Protection Act provides for various protective mechanisms related to minors, including the promulgation of the rights of a child, protection against violence and the exploitation of identity and personal data, etc.

5.4.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 75 of the RTA provides for the obligations related to commercial communications which may impair the physical, mental or moral development of minors, and reads:

(9) Commercial communications must not:

- 1. pose a risk of physical or moral detriment to children;*
- 2. directly exhort children to buy or hire a product or service by exploiting their inexperience or credulity;*
- 3. encourage children to persuade their parents or others to purchase the goods or services being advertised;*
- 4. exploit the special trust children place in their parents, teachers or other persons;*
- 5. unreasonably show children in dangerous situations.*

5.4.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

These obligations are to be found in the following provisions of the draft RTA, which stipulate the self-regulatory mechanisms for the aforementioned commercial communications, as follows:

Article 76:



(1) Media service providers shall develop, as part of their codes of conduct, rules regarding commercial communications accompanying or included in children's programmes for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugar, excessive intake of which in the overall diet is not recommended.

(2) Media service providers shall undertake to abide by the standards of the Ethical Code of the Bulgarian Media, developed by the National Council for Journalistic Ethics Foundation, and by the National Ethical Rules for Advertising and Commercial Communication, developed by the National Council for Self-Regulation Association.

(3) Media service providers shall elaborate rules for application of the criteria, adopted according to the procedure established by Article 32 (5) herein, as part of the code of conduct thereof referred to in Paragraph (1).

5.4.3.16. Other relevant information

Legislation including the Criminal Code and the Law on Protection against Discrimination regulate matters in relation to discrimination, incitement to discrimination, violence or hatred, treason, debauchery, pornographic materials, etc. as well as sanctions and penalties foreseen for committing these acts. The legislation in question stipulates the prohibition of propagating such acts through the press or other mass media, through electronic information systems or in any other way.

5.4.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

Article 19e (6) of the draft Law states that VSP providers shall determine appropriate measures, according to the nature of the content concerned, the harm it may cause, the characteristics of the category of persons to be protected, and the rights and legitimate interests at stake, including those of VSP providers and users who have created or uploaded the content, and in the interest of the audience. In paragraph (7), it further provides that the measures shall be applicable and proportionate, taking into account the size of the VSP



service and the nature of the service provided, without further details. These measures cannot lead to preliminary control or filtering of uploaded content.

5.4.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and video-sharing platform providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to video-sharing platform providers (as required by Article 28(b)8 of the AVMS Directive).

5.4.5.1. Regulatory body

The competent regulatory body for VSPs is the Council for Electronic Media (CEM).¹⁴⁶

5.4.5.2. Existence of a registration/notification system

The registration system is envisaged in Article 19d in a manner which foresees the inclusion of the list of VSPs under Bulgarian jurisdiction in the CEM's public register, in a manner as envisaged by the AVMSD.

Article 19d:

(1) The Council for Electronic Media shall maintain in its public register under Article 125k an updated list of providers of video-sharing platforms that are established or are considered to be established in the country and shall indicate which of the criteria set out in Article 1, 23a is based on their jurisdiction. The Council for Electronic Media shall inform the European Commission of the list and any updates thereto. Discrepancies between the list and the lists of other countries shall be settled in cooperation with the European Commission and the relevant national regulatory authorities.

The notification system is also envisaged for VSPs who intend to provide services, and who may request a certificate of notification to be issued to them. The system will also include

¹⁴⁶ <http://www.cem.bg/>.



a 14-day notification procedure for those who no longer wish to provide services. Specifically, the draft, in its new Section VIII reads as follows:

Section VIII Video-Sharing Platform Services

Art. 125p. Persons who intend to provide services on video-sharing platforms shall notify the Council for Electronic Media pursuant to Art. 125q.

(1) The persons under Art. 125p shall submit to the Council for Electronic Media a notification in a form, which shall contain:

- 1. identification data - name (company), seat and address of management and the respective unified identification code;*
- 2. Internet address (URL) of the video-sharing platform;*
- 4. territorial scope;*
- 5. telephone, fax, e-mail address, correspondence address and contact person;*
- 6. estimated date for starting the activity.*

(2) The notification under para. 2 shall be submitted in Bulgarian.

(3) A draft of general conditions for use of the video-sharing platform shall be attached to the notification.

Art. 125u. A service provider of a video-sharing platform may request in writing from the Chair of the Council for Electronic Media to issue a certificate of entry in the register.

(2) The Chairman of the Council for Electronic Media shall issue the certificate under para. 1 within 7 days from the receipt of the request.

Art. 125v. (1) Upon termination of the services on a video-sharing platform, the provider shall notify the Council for Electronic Media within 14 days.

(2) Within 14 days the Council for Electronic Media shall delete the provider in the respective register.

5.4.5.3. Compliance, enforcement and sanctioning powers

Compliance with the regulatory framework is entrusted to the CEM, and the draft Law has envisaged its responsibilities over obligations with respect to VSPs. More precisely, Article 32 regulating the monitoring and sanctioning power of the CEM is amended to provide for this, as follows:

24. supervises the providers of video-sharing platforms for observance of the requirements of this law, referring to their activity.



5.4.5.4. Development of self- or co-regulatory codes or schemes

In line with the text of the revised AVMSD, which puts strong emphasis on the development of self and co-regulatory schemes related to implementation of the obligations of VSPs, these mechanisms are further enhanced, unlike the previous system which did not put a lot of emphasis on these mechanisms.

Under the draft Law, a new Article 4b is inserted:

(1) Self-regulation and co-regulation shall be encouraged through codes of conduct and standards, where suitable and appropriate. Codes of conduct and standards include, but are not limited to:

- 1. Code of Ethics of the Bulgarian media, developed by the National Council for Journalistic Ethics Foundation;*
- 2. Uniform standard for regulation of sound levels in advertising, adopted in the industry;*
- 3. National ethical rules for advertising and commercial communication, developed by the National Council for Self-Regulation Association, in compliance with the Code of Conduct under Article 17a, paragraph 3;*
- 4. Other standards for implementation of Directive (EU) 2010/13, as amended by Directive (EU) 2018/1808.*

(2) Codes of conduct and standards and their application must meet the following requirements:

- 1. be widely accepted by key stakeholders;*
- 2. to include clearly and unambiguously set goals;*
- 3. to provide a mechanism for regular, transparent and independent monitoring and periodic assessment of the achievement of the set goals;*
- 4. to provide means for their effective observance, including an order for amendment and effective and proportional sanctions.*

(3) The providers of media services shall be obliged to observe the provisions of the acts under para. 1.

(4) The service providers of video-sharing platforms shall be obliged to observe the provisions of the National Ethical Rules under para. 1, item 3.

(5) Self-regulation is encouraged through codes of conduct developed by media service providers, video-sharing platform service providers or organisations representing them, where appropriate in cooperation with other sectors, such as industry, trade, professional



and consumer associations or organisations. These codes must be widely accepted by the main stakeholders at the level of the European Union and must comply with the requirements of para. 2, items 2-4. Codes of conduct at the level of the European Union shall not affect the application of national codes of conduct.

(6) When adopting more detailed or stricter rules in accordance with Directive 2010/13/EU, as amended by Directive (EU) 2018/1808 and European Union law, and if the Council for Electronic Media deems that there is evidence of the ineffectiveness of a code of conduct or parts of it, the Council for Electronic Media may require media service providers under their jurisdiction to comply with the relevant rules. The Council for Electronic Media shall also inform the European Commission of the rules within one month.

There is also a new obligation imposed on the Council for Electronic Media, namely, the newly envisaged paragraph 8 of Article 32, which stipulates the following:

(8) The Council for Electronic Media shall adopt rules for effective joint regulation pursuant to Art. 4b, para. 2 and monitors the compliance of the acts under Art. 4b para. 1. Proceedings may also be instituted at the request of an interested person. Initiated compliance proceedings are terminated by a decision of the Council for Electronic Media. In the event that the Council for Electronic Media finds non-compliance with the framework, media service providers and/or providers of video-sharing platforms shall not be liable to comply with the relevant act.

Under the draft Law, as stipulated above, Article 19e puts particular emphasis on the self-regulation of VSPs:

(12) Self-regulation shall be encouraged through codes of conduct of the European Union according to Art. 4b. Providers of video-sharing platforms are encouraged to share best practices on codes of conduct in the area of co-regulation.

The CEM also monitors the terms and conditions of VSPs and how they respond to their obligations vis-à-vis the protection of minors. According to Article 125s:

(1) The general conditions of the services of the video-sharing platforms shall obligatorily contain:

- 1. identification data of the service provider on a video-sharing platform - name, registered office and address of management;*
- 2. conditions for using the services of the video-sharing platform;*
- 3. basic rights and obligations of the users of the services of the platform for sharing videos;*
- 4. description of the measures under Art. 19e, para 6 and 8;*
- 5. responsibilities and sanctions in case of non-fulfilment of the general conditions;*
- 6. conditions and procedure for restricting the access to content or to the services of the platform in case of violations by the users.*

(2) In case of incompleteness of the notification under Art. 125s, para. 1 within 7 days of its



receipt, the Council for Electronic Media shall notify the person in writing to eliminate the incompleteness.

(3) In case the general conditions do not meet the requirements of this law, the Council for Electronic Media shall notify the person under Art. 125q, giving instructions and a term for elimination of the shortcomings.

(4) The Council for Electronic Media shall enter the person in the register under Art. 125k, para. 2, item 6 and shall coordinate the general conditions within 30 days from the date of receipt of the notification or from the elimination of the incompleteness and shortcomings by the order of para. 2 and 3.

(5) The General Terms and Conditions shall be published on the website of the service provider of video-sharing platforms, providing easy, direct and quick access to them.

Art. 125t further stipulates the role of the CEM in the obligations set forth for VSPs:

*(1) Amendments to the general terms and conditions may be made at the initiative of the service provider of a video-sharing platform or of the Council for Electronic Media.
(...)*

(3) Amendment of the general conditions at the initiative of the Council for Electronic Media shall be carried out in order to ensure the interests of the consumers (the audience). In that case, the Council shall, by decision, give binding instructions to the supplier on the relevant amendments.

5.4.5.5. Out-of-court redress mechanisms for users

Apart from the aforementioned verbatim transposition of the wording of the AVMSD in Article 19e(10) related to the protection of minors and the public against harmful content on VSPs in terms of reference to the “impartial settlement of disputes between suppliers and consumers through an out-of-court mechanism, without depriving consumers of the legal protection afforded by national law”, no specific procedures are envisaged. It should be added that a Mediation Act is in force in Bulgaria, envisaging alternative ways of resolving legal and non-legal disputes, but is still rarely implemented by interested parties in Bulgaria.

5.4.5.6. Rights before a court for users

These measures are stipulated by the draft Law, in Article 19f, as follows:



(13) Notwithstanding the application of this law by the Council for Electronic Media, the users of video-sharing platforms may defend their rights before a court in respect of the providers of video-sharing platforms in accordance with para 1 and para 6-8.

5.4.6. Studies, reports and research

The following report has been prepared in relation to the transposition of the revised AVMSD:

- Reasons for adoption of a draft law amending and supplementing the RTA, an explanatory report to the draft Law.¹⁴⁷

5.4.7. Data compilation

This factsheet is based on data compiled by Dr. Bissera Zankova, a lawyer and Council of Europe expert and Assoc. Prof. Dr. Ivo Indzhov, Associate Professor of Journalism at St. Cyril and St. Methodius University, Veliko Tarnovo.

¹⁴⁷ <http://mc.government.bg/page.php?p=141&s=737&sp=0&t=0&z=0>.



5.5. CY – Cyprus – National legal summary¹⁴⁸

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the draft bill amending the Radio and Television Organisations Law (Draft Bill).

5.5.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft bill amending the Radio and Television Organisations Law (*Περί Ραδιοφωνικών και Τηλεοπτικών Οργανισμών (Τροποποιητικός) Νόμος του 2021*).¹⁴⁹

5.5.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSP stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 25. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Cypriot response to European Audiovisual Observatory standardised survey

¹⁴⁸ The factsheet on Cyprus incorporates the feedback received from Constandia Michaelidou, Radiotelevision Legal Officer at the Cyprus Radiotelevision Authority, during the checking round with the national regulatory authorities.

¹⁴⁹ http://www.cylaw.org/nomoi/arith/2021_1_074.pdf.



5.5.2.1. VSP service

Article 2 of the Draft Bill defines the term “video-sharing platform service” by transposing the text of the revised AVMSD verbatim, as follows:

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, [...] 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.”

5.5.2.2. VSP provider

Article 2 of the Draft Bill defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows:

the natural or legal person who provides a video-sharing platform service.

5.5.2.3. User-generated video

Article 2 of the Draft Bill defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim , as follows:

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.

5.5.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.5.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.5.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.5.3.1. General provisions

There is no statutory definition of content inciting to violence or hatred, nor does the Draft Bill contain any specific definition; it merely reproduces the text of the Directive. In section 32F(1)(b) incitement to violence or hatred is also based on any of the grounds referred to in the Constitution. Specifically, section 32F of the Draft Bill incorporates Article 28b of the AVMSD in full:

Without prejudice to sections 15-18 of the law on certain aspects of information society services, in particular electronic commerce and related issues, as amended or replaced at the time:¹⁵⁰ the video-sharing platform providers under the jurisdiction of the Republic of Cyprus shall take appropriate measures for the protection of:

- a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with section 29(1);*
- 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 the Constitution and 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 EU law, namely public incitement to commit a terrorist offence as set out in section 13 of the Counter-*

¹⁵⁰ This effectively incorporates Articles 12-15 of Directive 2000/31/EC.



Terrorism and Victim Protection Law as amended or replaced at the time,¹⁵¹ offences related to child pornography as set out in section 8(3) of the law on preventing and combatting the sexual abuse and sexual exploitation of children and child pornography, as amended or replaced at the time; and offences related to racism and xenophobia as set out in section 3 of the law on combatting certain forms of racism and xenophobia by means of criminal law.

Furthermore, there is no statutory definition of content which may impair the physical, mental or moral development of minors, nor does the Draft Bill contain any specific definition. Certain provisions in section 29 of the Radio and Televisions Organisations Law of 2020, now in force, provide that television broadcasters are required to ensure that they do not broadcast any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence. Such obligation shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measures, that minors in the area of transmission will not normally hear or see such broadcasts.

The revised section 29 of the Draft Bill provides that audiovisual media service providers under the jurisdiction of the Republic of Cyprus have an obligation to take appropriate safeguarding measures so that audiovisual media services 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. They shall be proportionate to the potential harm of the programme. The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures. Audiovisual media service providers have an obligation to provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, audiovisual media service providers shall use a system describing the potentially harmful nature of the content of an audiovisual media service. For the implementation of this paragraph, the Radio Television Authority shall encourage the use of co-regulation as provided for in paragraph 1 of section 31B of the law. The Authority and the Commission may foster self-regulation, for the purposes of this section, through EU codes of conduct as referred to in paragraph 2 of section 31B. As regards programmes which are broadcast in unencoded forms, audiovisual media service providers are required to ensure that they are preceded by an acoustic warning or that they are identified by the presence of a visual symbol throughout their duration. In order to fulfil the obligations referred to in sub-section (1) of Article 29, on-demand audiovisual media service providers must have, apart from ratings and additional technical measures, a user-friendly system of content screening and access codes, which shall be provided to parents or guardians of minors when they are registered as subscribers to a provider. Such measures should be designed to ensure that minors will not access services which might impair their physical,

¹⁵¹ This effectively incorporates Article 5 of Directive (EU) 2017/541.



mental or moral development and the on-demand audiovisual media service providers should inform the Radio Television Authority accordingly. The Radio Television Authority, being in contact with the Radio Television Advisory Committee, shall periodically investigate the possible advantages and disadvantages of any further measures in order to facilitate the control exercised by parents and guardians over the programmes that minors watch. This investigation shall include the feasibility of:

- a) the requirement for new television sets to be equipped with a technical device enabling parents and guardians to prevent children from watching specific programmes;
- b) creating appropriate programme rating systems;
- c) encouraging family viewing policies and other educational and awareness measures;
- d) considering the experience gained in the Republic, the other member states and in third countries as well as the views of interested parties such as broadcasters, producers, education and mass media experts and relevant organisations.

5.5.3.2. Adapting terms and conditions of the VSP service to include these obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, section 32F (8)(a) of the Draft Bill stipulates these obligations, without further specifications.

5.5.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers, section 32F (8)(b) of the Draft Bill stipulates these obligations, without further specifications.

5.5.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, section 32F



(8)(c) of the Draft Bill uses the text of the AVMSD and stipulates these obligations, without further specifications.

5.5.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the general provisions, section 32F (8)(d) of the Draft Bill stipulates these obligations, without further specifications.

5.5.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, section 32F (8)(e) of the Draft Bill stipulates these obligations, without further specifications.

5.5.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, section 32F (8)(f) of the Draft Bill stipulates these obligations, without further specifications.

5.5.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, section 32F (8)(g) of the Draft Bill stipulates these obligations, without further specifications.



5.5.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Draft Bill, section 32F (8)(h) of the Draft Bill stipulates these obligations, without further specifications.

5.5.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, section 32F (8)(i) stipulates these obligations, without further specifications.

5.5.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, section 32F (8)(j) of the Draft Bill stipulates these obligations, without further specifications.

5.5.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, section 32F (9) of the Draft Bill provides for these prohibitions, without further specifications.

5.5.3.13. Other relevant provisions related to the protection of minors

Current legislation provides for a number of additional rules. These reflect a particular concern for the programmes which are transmitted at times when minors may be watching, in order to ensure that programmes within the family viewing schedule are appropriate for a general audience, including children under fifteen. According to Radio and Television



Stations Regulation 10/2000 the ‘family viewing schedule’ (pre-watershed) refers to the period during which programmes in a non-coded form that are suitable for viewers under the age of fifteen are broadcast. The schedule starts at 5.30 a.m. and ends at 9 p.m. on evenings followed by working days and at 10 p.m. on evenings followed by Saturday and Sunday, national holidays and school vacations.

Also, there is a responsibility to ensure that the audience is always aware of the contents of any programme that they may hear or watch and in this respect all programmes shall be ranked according to five categories, each being indicated by a particular symbol and colour referring to minors, depending on their age. The broadcast of scenes of violence against minors is absolutely prohibited. It is also prohibited to broadcast programmes with scenes of family violence during the family viewing schedule. There is a further prohibition of violence in cartoons, or in other children’s programmes.

5.5.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

The new section 30E (1) of the Draft Bill provides that audiovisual commercial communications provided by media service providers under the jurisdiction of the Republic of Cyprus shall comply, *inter alia*, with the following requirements:

Audiovisual commercial communications shall not:

- a) cause physical, mental or moral detriment to minors, or*
- b) directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, or*
- c) directly encourage them to persuade their parents or others to purchase the goods or services being advertised, or*
- d) exploit the special trust minors place in parents, teachers or other persons, or*
- e) unreasonably show minors in dangerous situations.*

5.5.3.15. Other relevant provisions related to minors’ exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The new section 30E (1) (f) of the Draft Bill provides that audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages. The Radio Television Authority shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children’s programmes, 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, the excessive consumption of which is not



recommended in the overall diet. These codes shall aim to effectively reduce the exposure of children to audiovisual commercial communications for such foods and beverages. They shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

5.5.3.16. Other relevant information

N/A.

5.5.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content. Section 32F (7) of the draft bill stipulates these principles.

This section aims at identifying how this is implemented in the national legislation.

No specific provision of the Draft Bill deals with this issue.

5.5.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive), the corresponding section in the Draft Bill being section 32F (14), and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive), the corresponding section in the Draft Bill being section 32F (15).



5.5.5.1. Regulatory body

The competent regulatory body is the Cyprus Radio Television Authority (CRTA).¹⁵²

5.5.5.2. Existence of a registration/notification system

According to section 32E(7), VSP providers intending to establish on the territory of the Republic of Cyprus are obliged to inform the Authority accordingly. The CRTA is responsible for keeping and updating a list of VSP providers who are established or deemed to be established in the Republic of Cyprus and communicates such information to the European Commission, pursuant to section 32(E)(8) of the Draft Bill. Further, the CRTA may assess the measures implemented by VSPs, pursuant to section 32F (11), while, pursuant to section 32G of the Draft Bill, the CRTA shall have the power to impose administrative sanctions on VSPs for any violation of the provisions of the law. Such sanctions shall be prescribed by sub-legislative regulations. The CRTA may also monitor the application of the law.

5.5.5.3. Compliance, enforcement and sanctioning powers

CRTA may assess the measures implemented by video-sharing platforms, pursuant to Section 32(5) of the Draft bill, while, pursuant to section 32F, it shall have the power to impose administrative sanctions to video-sharing platforms for any violations of relevant provisions. Such sanctions shall be prescribed by Regulations. It may also monitor the application of the Law.

5.5.5.4. Development of self- or co-regulatory codes or schemes

The CRTA shall encourage the development of self- or co-regulatory codes for VSPs pursuant to section 32F (5) of the Draft Bill. No such codes have so far been enacted for VSPs. The CRTA cooperates with the Commissioner of Electronic Communications and Postal Regulation and takes advice from a Consultation Committee of Radio and Television. This committee is composed of representatives from bodies and agents of the Ministry of the Interior, the Ministry of Communications and Works, the Ministry of Education and Culture, the Law Office of the Republic of Cyprus, private TV stations, private radio stations, the Union of Cyprus Journalists, local administration, trade unions, the Cyprus Chamber of Commerce and Industry, the Cyprus Employers & Industrialists Federation, the Technical Chamber of Cyprus, the University of Cyprus, the Cyprus Consumers Association, the Cyprus Sociological and Psychological Association (the representative of this association is elected

¹⁵² <http://www.crtat.org.cy/default.asp?id=24>.



by the Cyprus Confederation of Parents Associations), the Cyprus Advertisers Association, etc.

5.5.5.5. Out-of-court redress mechanisms for users

Section 32F (14) of the Draft Bill provides that the Republic of Cyprus shall introduce an out-of-court redress mechanism for the settlement of disputes between users and VSP providers. No such mechanism has so far been put in place.

5.5.5.6. Rights before a court for users

Section 32F (15) of the Draft Bill provides that users can assert their rights before a court against a VSP provider in relation to sub-sections (1), (6), (7), (8) and (9). Assuming a statutory provision is put into effect, this can be implemented without any specific conditions.

5.5.6. Studies, reports and research

N/A.

5.5.7. Data compilation

This factsheet is based on data compiled by Achilles C. Emilianides, Dean of the School of Law of the University of Nicosia and Sofia Iordanidou, Associate Professor of Journalism and Communication at the Open University of Cyprus.



5.6. CZ – Czech Republic – National legal summary¹⁵³

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the draft Act on Video-Sharing Platform Services, and on the amending of certain related laws (draft VSP Law).

5.6.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft Act on Video-Sharing Platform Services, and on the amending of certain related laws (*Návrh zákona o službách platforem pro sdílení videonahrávek a o změně některých souvisejících zákonů*)¹⁵⁴
- Broadcasting Act (Ustawy o radiofonii i telewizji)¹⁵⁵

5.6.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSP stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 26. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	Yes.

¹⁵³ The factsheet on the Czech Republic incorporates the feedback received from the Czech Council for Radio and TV Broadcasting (RRTV).

¹⁵⁴ <https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=981&CT1=0>.

¹⁵⁵ <https://www.rrtv.cz/en/static/documents/act-231-2001/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf>.



Source: Czech response to European Audiovisual Observatory standardised survey

5.6.2.1. VSP service

Article 2(1) a of the draft VSP Law defines a VSP service as the information society service of a VSP, as follows:

According to the Act on Certain Information Society Services, a video-sharing platform service is an information society service whose principal purpose, or principal purpose of its dissociable section, or whose essential functionality is devoted to providing programmes or user-generated video recordings, for which the video-sharing platform provider does not have editorial responsibility. The organisation of such video recordings is determined only by automated means or algorithms, in particular by displaying, tagging or sequencing to the general public in order to inform, entertain or educate via electronic communication networks.

5.6.2.2. VSP provider

Article 2(1) (b) of the draft VSP Law defines the term “video-sharing platform provider” in a manner similar to the term “video-sharing platform service”, where the service is provided via VSPs. The definition, which lacks a distinction between a natural and a legal person (therefore covering both), is as follows:

A video-sharing platform provider refers to a person that provides a video-sharing service for sharing of video recordings.

5.6.2.3. User-generated video

Article 2(1) (e) of the draft VSP Law defines the term “user-generated video” again as recordings, as follows:

A user-generated video recording is a set of moving images with or without sound constituting an individual item of the audiovisual content organized on the platform, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user.

5.6.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.6.2.5. “Essential functionality” of a VSP service

The reference to “essential functionality” is derived from the aforementioned definition of a VSP in the aforementioned Article 2 (1) (a), which provides for it to mean an “information society service”, and further contains a provision relating to the notion of “essential functionality” in Article 2 (2), which should be interpreted in compliance with the guidance issued by the European Commission’s guidelines on video-sharing platforms,¹⁵⁶ and those guidelines which will be published by the media regulatory authority.

5.6.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.6.3.1. General provisions

Prohibitions related to discrimination and incitement to hatred can be found in the Criminal Code. In relation to the protection of minors, the Broadcasting Act and the Video on Demand (VOD) Act still use the wording of the previous AVMSD and refer to content which is likely to or which may seriously impair the physical, mental or moral development of minors, without any further specification. This wording is used only in connection with the duties of the broadcaster/VOD provider.

Article 7 (1) (a), (b), (c) of the draft VSP Law imposes a duty on VSP providers to implement measures with the aim of:

- (a) protecting minors against content which may impair their development; such measures should ensure that minors will not normally see or hear such content and include, in particular, age verification tools or other technical measures;

¹⁵⁶ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0707\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0707(02)&from=EN).



- (b) protecting the public against content inciting to violence or hatred;
- (c) protecting the public against content whose dissemination is a criminal offence, in particular public incitement to commit an act of terrorism, crimes related to child pornography, and crimes related to racism and xenophobia.

It further refers, in Article 7 (1) (a), to programmes, user-generated video recordings, and commercial communication, which may impair the physical, mental or moral development of minors and proposes that VSP providers adopt measures to protect minors against such harmful content (shows, user-generated video recordings and commercial communication which may impair the physical, mental or moral development of minors). Such harmful content must not be accessible in a way that minors can normally see it or hear it, and should, in particular, include age verification tools or other technical measures.

5.6.3.2. Adapting terms and conditions of the VSP service to include these obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, Article 8 (3) (a) introduces these obligations, without further specifications.

5.6.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, the draft VSP Law, in Article 8 (3) (b), introduces these obligations, without further specifications.

5.6.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 8 (3) (c) of the draft VSP Law introduces these obligations, without further specifications.



5.6.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in 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 the content referred to in Article 7 (1) of the draft VSP Law, Article 8 (3) (d) introduces these obligations, without further specifications.

5.6.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 8 (3) (e) of the draft VSP Law introduces these obligations on users' reporting relevant to the aforementioned paragraph 8 (3) (d), without undue delay and not later than 60 days following any reporting or designating as referred to in the aforementioned paragraph 8 (3) (d).

5.6.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 8 (3) (f) of the draft VSP Law introduces these obligations, without further specifications.

5.6.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 8 (3) (g) of the draft VSP Law introduces these obligations, in reference to content relating to that identified in Article 7 (1) of the draft VSP Law, including any content related to the protection of minors and protection against hatred, terrorist attacks, etc.



5.6.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 8 (3) (h) of the draft VSP Law introduces these obligations, without further specifications.

5.6.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 8 (3) (i) of the draft VSP Law introduces these obligations, in relation to the implementation of the measures referred to in the aforementioned paragraphs 8 (3) (d) to 8 (3) (h), including information for platform users on the option to resolve a dispute out of court or as a consumer dispute filed with the Czech Trade Inspection pursuant to the Consumer Protection Act.

5.6.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 8 (3) (j) of the draft VSP Law introduces these obligations, without further specifications.

5.6.3.12. Forbidding processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 9 of the draft VSP Law stipulates that the personal data of minors collected or otherwise generated by VSP providers pursuant to the aforementioned Article 8 (3) (f) and 8 (3) (h) may not be processed for commercial purposes, in particular for direct marketing, profiling and behaviourally targeted advertising.



5.6.3.13. Other relevant provisions related to the protection of minors

The Criminal Act and the Data Protection Act provide for various protective mechanisms related to minors, including protection against violence, personal data abuse, etc.

5.6.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 7 (1) (a) of the draft VSP Law provides that VSP providers shall take measures aimed at protecting minors against programmes, video recordings and commercial communication, which may impair their development and that such measures should ensure that minors will not normally see or hear such content and include, in particular, age verification tools or other technical measures.

5.6.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

Article 4 (b) of the Act on the Regulation of Advertising stipulates that advertising for alcoholic beverages may not be aimed at individuals below 18 years of age, and in particular may not depict such individuals (or individuals who look like individuals below 18 years of age) consuming such beverages, and may not use elements, means or actions designed to appeal to such individuals.

Currently, there is no regulation related to HFSS foods and such regulation is not included in the draft VSP Law. However, these duties should apply to AVMS providers (not to VSP providers) via ethical codes within the self-regulatory mechanisms, and the relevant legislative proposal provides for this. The Advertising Standards Council is the relevant Czech self-regulatory body.

Furthermore, while self-regulatory mechanisms in relation to advertising products to minors exist for other media, they are currently not applicable to VSPs. The draft VSP Law does contain such obligations. In particular, Article 7 (1) (a) provides that VSP providers shall take measures aimed at protecting minors against programmes, video recordings and commercial communication, which may impair their development; such measures should ensure that minors will not normally see or hear such content and include, in particular, age verification tools or other technical measures. Article 7 (4) further provides that commercial communications, which are marketed, sold or arranged by such VSP providers, must not be specifically aimed at minors. Article 7 (6) provides that commercial communications, which are marketed, sold or arranged by such VSP providers, must not physically, mentally or morally impair minors by:

- a) directly encouraging minors to purchase or lease products or services, exploiting their inexperience and credulity;



- b) directly encouraging minors to persuade their parents or third persons to purchase promoted goods or services;
- c) exploiting the special confidence which minors have with their parents, teachers or other persons; or
- d) depicting minors in dangerous situations without a justified context.

5.6.3.16. Other relevant information

Legislative acts, including the Criminal Code, cover issues such as: incitement to hatred against a group of persons or to suppression of their rights and freedoms (Article 356); the support and endorsement of terrorism (Article 312e); the production and other involvement with child pornography (Article 192); defamation of a person's nation, race, ethnic or other group (Article 355). These acts constitute criminal liability and are considered as offences/crimes.

5.6.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

Article 8 (1) and (2) of the draft VSP Law refers to the obligatory measures for VSPs which should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content, but the provisions do not contain any reference to *ex ante* control measures or upload filtering. Moreover, the provisions do not define the criteria mentioned in greater detail, other than to mention the harm the content may cause, the characteristics of the category of persons to be protected, the rights and legitimate interests at stake, including the interests of a VSP provider and platform users, and general public interest. These criteria are not defined; they will be applied by the Council for Radio and Television Broadcasting (RRTV). This has not yet been put into practice, but RRTV is expected to issue some guidance in the future.



5.6.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.6.5.1. Regulatory body

The competent regulatory body to a certain extent is RRTV.¹⁵⁷

5.6.5.2. Existence of a registration/notification system

The draft VSP Law, in its Article 6 (2), envisages *a priori* notification and requires that a person intending to provide a VSP service should notify RRTV at least 15 days before the start of such provision of services. This provision also contains the information that has to be provided, including a description and evidence of the criteria establishing the jurisdiction of the Czech Republic over the service. The list of VSP providers is to be published on the RRTV website.

Pursuant to Article 14 of the draft VSP Law, persons that already provide VSP services are required to send notification to RRTV within 90 days following the entry into force of the legislation. Such notification should contain the same information as mentioned above, and should contain a description of protection measures as required in the aforementioned Article 8 (4) of the draft VSP Law.

5.6.5.3. Compliance, enforcement and sanctioning powers

RRTV has the power to consider whether the protective measures applied by the VSP providers are sufficient and suitable. If RRTV concludes that the measures are not sufficient, it may request that such measures are implemented. If such measures are not implemented, RRTV may initiate administrative proceedings against the VSP provider and impose financial penalties.

Article 8 (4) of the draft VSP Law provides that any changes to protection measures must be notified to RRTV at least 15 days before new measures come into effect. RRTV shall

¹⁵⁷ <https://www.rrtv.cz/cz/>.



assess whether the measures or the potential changes to them are appropriate and, if necessary, shall communicate its recommendations to the VSP provider. If there are “serious insufficiencies” in the measures, RRTV may send the VSP provider a request to remedy within a reasonable deadline. If such deadline is not met, administrative proceedings may be initiated and financial penalties can be imposed.

Any processing of the personal data of minors for commercial purposes falls under the jurisdiction of the Personal Data Protection Office.

5.6.5.4. Development of self- or co-regulatory codes or schemes

Article 5 (w) of the Broadcast Act in the amendment to the Broadcast Act (which is part of the draft VSP Law) provides that RRTV helps to develop self-regulation within the scope of its authority and cooperates with any self-regulatory body, if such cooperation is requested by a self-regulatory body. RRTV should publish on its website the list of self-regulatory bodies performing activities that fall within the scope of RRTV’s authority.

Pursuant to new proposed wording of Article 5 (x) of the Broadcasting Act, RRTV, at the request of self-regulatory bodies, issues statements and produces recommendations for the internal regulation of self-regulatory bodies, including details of the duties of TV broadcasters, retransmission operators, providers of AVMS on demand, and VSP providers, in particular in relation to the protection of minors against programmes which may impair their physical, mental or moral development.

Pursuant to new proposed wording of Article 5 (y) of the Broadcasting Act, RRTV also issues implementation regulations in the field of radio and TV broadcasting, retransmission, the provision of VOD services, and the provision of VSP services.

It should also be noted that new self-regulatory organisation(s) will be established and RRTV will cooperate with these organisations. RRTV should support the development of organisations within the scope of its powers.

5.6.5.5. Out-of-court redress mechanisms for users

The draft VSP Law, in Article 8 (3) (i), provides that protection measures, where appropriate, include establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of platform users’ complaints addressed to a VSP provider, including information for platform users on the option to resolve a dispute out of court or as a consumer dispute filed with the Czech Trade Inspection pursuant to the Consumer Protection Act.

Currently, users may seek the resolution of potential disputes as consumers under the Consumer Protection Act for consumer-related matters, but no other out-of-court redress mechanisms are available with respect to VSP services.



5.6.5.6. Rights before a court for users

The draft VSP Law, in Article 8 (5), provides that the right of platform users to file a civil action with a competent court related to disputes over the extent of the measures implemented by the VSP provider is not affected.

5.6.6. Studies, reports and research

N/A.

5.6.7. Data compilation

This factsheet is based on data compiled by Antonín Hedrlín, Ph.D, Attorney at Law.



5.7. DE – Germany – National legal summary¹⁵⁸

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the State Media Treaty (MStV), the German Telemedia Act (TMG) and the Network Enforcement Act (NetzDG).

5.7.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- State Media Treaty (*Medienstaatsvertrag, MStV*).¹⁵⁹
- Telemedia Act (*Telemediengesetz, TMG*).¹⁶⁰
- Network Enforcement Act (*Netzwerkdurchsetzungsgesetz, NetzDG*).¹⁶¹

5.7.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 27. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.

¹⁵⁸ The factsheet on Germany incorporates feedback received from Peter Matzneller, Consultant on Legal and European Affairs at the Joint Management Office of the Media Authorities (die medienanstalten) during the checking round with the national regulatory authorities.

¹⁵⁹ <https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Medienstaatsvertrag.pdf>.

¹⁶⁰ https://www.bmwi.de/Redaktion/DE/Downloads/S-T/telemediengesetz.pdf?__blob=publicationFile&v=8.

¹⁶¹ https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RegE_Aenderung_NetzDG.pdf.



“Essential functionality”	No.
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Source: German response to European Audiovisual Observatory standardised survey

5.7.2.1. VSP service

Article 2 (2) No. 22 MStV, Article 2 TMG and Article 3d No. 1 NetzDG define a VSP service by defining video-sharing services, without any reference to platforms, due, according to the explanatory memorandum, to the avoidance of unnecessary overlaps with the regulations on media platforms and user interfaces:

Video-sharing service means a telemedia service in which the main purpose of the service or a separable part of the service or an essential function of the service is to provide programmes to the general public with moving images or user-generated videos for which the service provider has no editorial responsibility, and where the service provider determines the organisation of the programmes or the user-generated videos, which can also mean by automatic means.

5.7.2.2. VSP provider

Article 2 (2) Nr. 23 MStV and Article 2 Nr. 11 TMG 4 define a VSP provider, without referring to a natural or legal person, as: “a video-sharing service provider, who operates a video-sharing service”.

5.7.2.3. User-generated video

Article 2 (2) Nr. 24 MStV, Article 2 Nr. 10 a) TMG and Article 3d Nr. 2 NetzDG define user-generated video, by transposing the text of the revised AVMSD verbatim, as follows:

User-generated video of a sequence of moving images with or without sound created by a user, which is an individual component regardless of its length and which is uploaded to a video-sharing service by this or another user.

5.7.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.7.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.7.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.7.3.1. General provisions

The Interstate Treaty on the Protection of Minors in the Media (JMStV) provides for the list of prohibited content, such as content which

incites hatred against parts of the population or against a national, racial, religious or ethnic group, incites violence or arbitrary measures against them, or attacks the human dignity of others by insulting, maliciously disparaging or slandering parts of the population.

Other prohibited content includes content whose dissemination may constitute a criminal offence. A more concrete definition of the terms can be found in the Joint Guidelines of the State Media Authorities for the Protection of Human Dignity and the Protection of Minors (JuSchRiLi),¹⁶² which were issued by the competent media supervisory authorities on the basis of the JMStV. According to Article 2.1.3.2, incitement to hatred is defined as targeted action "intended to create or increase hostility against sections of the population beyond mere rejection or aversion". Calls for violent and arbitrary measures are defined as "statements that go beyond mere advocacy of attitudes or actions".

The NetzDG, which establishes obligations for social networks, which may include VSPs, defines illegal content according to Articles 1 (3) as such content

¹⁶²https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/JuschRiLi_der_Landesmedienanstalten_ab_15.10.2019.pdf



which fulfils the elements of the offence of Articles 86, 86a, 89a, 91, 100a, 111, 126, 129 to 129b, 130, 131, 140, 166, 184b in connection with 184d, 185 to 187, 201a, 241 or 269 of the Criminal Code and is not justified.

The new MStV and the amended JMStV do not provide for any changes to these existing definitions and references.

A draft amendment to the NetzDG does not provide for any changes to this definition either.

Content that falls within the list in Article 4 JMStV is generally considered to be prohibited content regardless of the means of playout and may not be disseminated except in the cases mentioned in Article 4 (2) 2 JMStV. Without prejudice to general criminal liability, distribution constitutes a criminal offence (Article 23 JMStV) or an administrative offence (Article 24 JMStV) in certain cases. Supervision is the responsibility of the respective competent state media authority (Article 20 JMStV). However, pursuant to Article 20 (4) JMStV, the regulations on liability under Articles 7 to 10 TMG must be observed. These regulations correspond to the liability privilege of the E-Commerce Directive. According to these regulations, service providers are not responsible for third-party information that they store for a user, unless they have knowledge or they have acted immediately to remove the information or block access to it as soon as they have gained knowledge of it.

Against so-called service providers of third-party content, which include video-sharing platforms, measures can, however, be ordered under Article 20 (4) JMStV in conjunction with Article 59 (4) RStV to block such content.

For certain social networks there is an additional reporting obligation pursuant to Article 2 NetzDG as well as obligations in dealing with complaints about illegal content pursuant to Article 3 NetzDG.

There are currently no special obligations for VSPs regarding the handling of illegal content.

Pursuant to Article 10a of the amendment to the TMG, in conjunction with Article 5b No. 1 of the amended JMStV, VSP providers are to be obliged to maintain a procedure by which users can electronically report complaints (user complaints) about illegal audiovisual content provided on the VSP service of the VSP provider.

5.7.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services in respecting the obligations stemming from the aforementioned general requirements, Article 10c (1) TMG, VSP providers should be obliged to effectively agree with



their users that they are prohibited from distributing illegal audiovisual commercial communication.

5.7.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 10c TMG, establishes that VSP providers are obliged to effectively agree with their users that they are prohibited from distributing illegal audiovisual commercial communications. This concerns audiovisual commercial communications for tobacco products, electronic cigarettes or refillable containers or for the benefit of companies whose main activity is the manufacture or sale of tobacco products, as well as for prescription drugs.

5.7.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 98 MStV provides that the provider of a video-sharing service must take measures to ensure that advertising that is not marketed, sold or compiled by the provider itself complies with the general advertising principles and labelling requirements of German media law. The provider complies with this obligation if it includes provisions in its general terms and conditions of business that oblige it to comply with the requirements (Article 98 (3) No. 1 MStV) and if it provides a function for labelling advertising (Article 98 (3) No. 2 MStV). An obligation to provide a function for marking audiovisual commercial communication can also be found in the amended TMG. In addition, Article 6 (4) TMG obliges VSP providers to label audiovisual communication uploaded by users to the service as such in the future if they have obtained knowledge of it through such a labelling mechanism or otherwise.

5.7.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the general provisions, Article 3 NetzDG provides for obligations for social networks in dealing with complaints about illegal content. These obligations apply within



the limited scope of the NetzDG. Pursuant to Article 10a TMG, VSP providers are obliged to maintain a procedure by which users can electronically report complaints about illegal audiovisual content provided on the provider's VSP service.

Article 10b TMG will regulate the procedure for remedying user complaints, which must be effective and transparent. Illegal content in this sense is defined as content that is illegal under media law pursuant to Article 4 JMStV and content that impairs development pursuant to Article 5 JMStV, unless the provider meets its obligations to take appropriate protective measures in this respect.

5.7.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the legislation provides no obligation for guidelines, but Article 10b TMG contains certain information obligations in the context of user complaints.

5.7.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, pursuant to Article 5 (3) JMStV, providers may, in order to fulfil their general obligations to protect children and adolescents, use technical means that make it impossible or considerably more difficult for them to take advantage of an offer, or provide the offer with an age rating that can be read by suitable youth protection programmes. The new Article 5a JMStV also requires providers of video-sharing services to take appropriate measures to protect children and adolescents from offerings that impair their development (Article 5a (1) JMStV). To this end, providers set up systems with which users can rate the content they upload and which can be read by age verification systems or parental control systems (Article 5a (2) JMStV).

5.7.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Please see under 5.7.3.7.



- 5.7.3.9. 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 – Article 28b (3) (h) AVMSD

Please see under 5.7.3.7.

- 5.7.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 10b TMG provides for obligations for video-sharing service providers with regard to the handling of user complaints. This includes, for example, rules on how long after removal unlawful content must be stored for evidentiary purposes, how information must be provided to users and complainants and rules about the possibility of submitting a counter-notice. In addition, the new Article 99 MStV provides for the establishment of a joint body for the arbitration of disputes between the complainants or users affected by the complaint and the providers of video-sharing services. The NetzDG is also extended in its scope of application to include specific regulations for video-sharing services, for example, an official arbitration board for the out-of-court settlement of disputes is to be expanded.

- 5.7.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

N/A.

- 5.7.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 14a TMG clarifies that service providers that have collected personal data from minors in order to protect minors, for example by means of age verification or other technical measures, may not process this data for commercial purposes.



5.7.3.13. Other relevant provisions related to the protection of minors

Article 19 JMStV provides for the possibility of forming recognised self-regulatory entities within the framework of regulated self-regulation under the supervision of the Commission for the Protection of Minors in the Media (KJM), an organ of the state media authorities responsible for compliance with the provisions for the protection of minors in the media.¹⁶³

5.7.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 6 JMStV contains general provisions on the protection of minors in advertising. According to these provisions, advertising may not impair children and adolescents either physically or mentally; moreover, it may not contain direct appeals to children or adolescents to buy or rent goods or services that exploit their inexperience or credulity; it may not directly encourage children or adolescents to persuade their parents or third parties to buy the goods or services advertised; it may not exploit the special trust children or adolescents place in parents, teachers, and other persons they trust; or it may show children or adolescents in dangerous situations without legitimate reason (Article 6 (2) JMStV). Advertising whose content is likely to impair the development of children or adolescents into independent and communicative personalities must be broadcast separately from content directed at children or adolescents (Article 6 (3) JMStV). Apart from other provisions, Article 6 JMStV also contains the provision that advertising for alcoholic beverages must not be directed at children or adolescents.

Article 98 MStV provides for more detailed regulations, especially for providers of video-sharing services to ensure that advertising which is not marketed, sold or compiled by the provider himself complies with certain media law requirements. With regard to the protection of children and adolescents, the rules are listed according to the types of advertising that may harm children and adolescents either physically or mentally (Article 6 (2) JMStV) as well as the new Article 6 (7) JMStV on food not recommended for children. The provider fulfils this obligation if it includes provisions in its general terms and conditions that oblige it to comply with the regulations (Article 98 (3) No. 1 MStV) and if it provides a function for labelling advertising (Article 98 (3) No. 2 of MStV).

An obligation to provide users with a function for identifying audiovisual commercial communications can also be found in amended Article 6 (3), (4) TMG. In addition, Article 10c TMG obliges providers of VSPs to agree with their users within the framework of general terms and conditions of business that inadmissible audiovisual commercial communication is prohibited. Thus, such illegal advertising is defined as advertising for tobacco products and prescription drugs.

¹⁶³ <https://www.kjm-online.de/aufsicht/telemedien/selbstkontrolle>.



5.7.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The general advertising rules of Article 6 (7) JMStV stipulate that providers must take appropriate measures to effectively reduce the impact on children of advertising for foods containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt, sodium or sugar, the excessive consumption of which is not recommended as part of the overall diet. The explanatory memorandum to the law lists codes of conduct of a self-regulatory body to which the providers are affiliated as suitable measures in terms of the regulation.

The general provisions are applicable to commercial communications disseminated by video-sharing services. This is also clarified in the new Article 98 (2) MStV.

With regard to commercial communication for HFSS foods that is not marketed, sold or arranged by video-sharing platform providers, the platforms will in future have obligations to include provisions in the general terms and conditions and to provide a function for identifying advertising. Article 98 (3),(1) of MStV explicitly refers to the new Article 6 (7) JMStV on non-recommendable foods.

5.7.3.16. Other relevant information

N/A.

5.7.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

No specific provision of the laws deals with this issue, a threshold is only provided for with regard to certain obligations of the NetzDG, but not in the regulations implementing the AVMSD. These obligations only affect social networks with more than 2 million registered users in Germany (Article 1 NetzDG). VSP services with less than two million registered users in Germany but based in Germany are to remain within the scope



of application of the Act to a limited extent with regard to content that is subject to certain criminal law provisions.

5.7.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regard to VSPs. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and video-sharing platform providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.7.5.1. Regulatory body

The competent regulatory body for VSPs is organised on a state level. Most German states have their own state media authority (LMA), while the states of Hamburg and Schleswig Holstein as well as the states of Berlin and Brandenburg respectively share one authority. The state media authorities form joint commissions for certain tasks. In the field of the protection of minors in the media, the KJM exists for this purpose and is responsible for the final evaluation of broadcasting and telemedia in the field of the protection of minors in the media. Cooperation takes place between the state media authorities within the framework of their joint institutions, for example the KJM, or the newly established joint arbitration board. Some co-operation is also planned between federal and state institutions.

5.7.5.2. Existence of a registration/notification system

Under Article 2b TMG, a list will be compiled of audiovisual media service providers and VSP providers whose country of location is Germany or for which Germany is considered the country of location.

5.7.5.3. Compliance, enforcement and sanctioning powers

If the respective state media authority determines that a violation of the provisions of the MStV has taken place, it shall take the necessary measures. According to Article 109 MStV, such measures are defined as complaint, prohibition, blocking, withdrawal and revocation. In the field of the protection of minors, the KJM shall take the necessary measures with



respect to providers of telemedia. Except in cases of serious violations of rules on illegal content, the establishment of self- and co-regulation shall be addressed first. The KJM's supervision is limited with respect to the decisions of recognised institutions of self- and co-regulation, as stipulated by Article 20 JMStV. Certain youth protection offences can constitute an administrative offence under Article 24 JMStV, which can be punished with a fine.

5.7.5.4. Development of self- or co-regulatory codes or schemes

According to Article 19 JMStV, voluntary self-regulatory bodies can be set up to monitor compliance with the provisions of the JMStV and the MStV. In order for their work to take precedence, these bodies have to be certified by the KJM. According to Article 19b JMStV, the KJM monitors these institutions of self- and co-regulation.

A large number of self- and co-regulatory organisations have been developed in Germany and are active in different areas of the media landscape. For example, the German Press Council, the German Advertising Standards Council, the Film Industry's Voluntary Self-Regulation Scheme, the Entertainment Software Rating Board, the Television Industry's Voluntary Self-Regulation Scheme and the Voluntary Self-Regulation of Multimedia Providers Scheme (FSM). In 2003, the system of regulated self-regulation in the area of the protection of minors was introduced. The FSM is an institution recognised under Article 19 (2) JMStV and responsible for telemedia providers, including VSPs. The organisation gives itself statutes and guidelines, as well as a code of conduct. It also provides review and complaint procedures with regard to the provisions for the protection of minors.

5.7.5.5. Out-of-court redress mechanisms for users

The regulatory authorities should in future set up a joint body pursuant to Article 99 MStV for the settlement of disputes between the complainants or users and providers of video-sharing services affected by any complaint concerning measures taken or omitted by providers of video-sharing services in the course of complaint procedures.

5.7.5.6. Rights before a court for users

No specific provision of the laws deals with this issue, but nothing prevents users from asserting their right before a court.



5.7.6. Studies, reports and research

The following reports have been prepared in relation to the transposition of the revised AVMSD:

- Self-and co-regulation in the new AVMSD, 2019¹⁶⁴
- First Public Consultation on the new State Media Treaty with submissions from academic institutes, associations and corporations, 2018¹⁶⁵
- Second Public Consultation on the new State Media Treaty with submissions from academic institutes, associations and corporations, 2019¹⁶⁶

5.7.7. Data compilation

This factsheet is based on data compiled by Jan Henrich, Research Associate and Christina Etteldorf, Research Assistant of the Institute of European Media Law.

¹⁶⁴ <https://rm.coe.int/iris-special-2019-2-self-and-co-regulation-in-the-new-avmsd/1680992dc2>.

¹⁶⁵ <https://www.rlp.de/de/regierung/staatskanzlei/medienpolitik/medienstaatsvertrag/onlinebeteiligung-2018/>.

¹⁶⁶ <https://www.rlp.de/index.php?id=32713>.



5.8. DK – Denmark – National legal summary¹⁶⁷

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the Act amending the Broadcasting Act and the Film Act (the Amending Act).

5.8.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Act amending the Radio and Television Act and the Film Act (*LOV nr 805 af 09/06/2020*).¹⁶⁸

Secondary legislation:

- Executive Order on Video-Sharing Platform Services (*Bekendtgørelse om videodelingsplatformstjenester*).¹⁶⁹

5.8.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 28. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.

¹⁶⁷ The factsheet on Denmark incorporates feedback received from Sabrina Amtrup and Marie Frank-Nielsen, Legal Officers from the Danish Agency for Culture and Palaces during the checking round with the national regulatory authorities.

¹⁶⁸ <https://www.retsinformation.dk/eli/lta/2020/805>.

¹⁶⁹ <https://www.retsinformation.dk/eli/lta/2020/1158#id261a1fc1-9116-449d-bbaf-8b0c42ef9b18>.



“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Danish response to European Audiovisual Observatory standardised survey

5.8.2.1. VSP service

Article 2 (1) of the Executive Order on Video-Sharing Platform Services defines the term “video-sharing platform service” by transposing the definition provided by the revised AVMSD almost verbatim, as follows:

A video-sharing platform service means a service where the main purpose of the service or a part of it that can be separated from it, or a significant function in the service consists in offering image programmes, jf. § 2 (6), user-generated videos or both to the public for which the provider of the video-sharing platform has no editorial responsibility, for the purpose of informing, entertaining or informing via electronic communications networks as defined in the Electronic Communications Networks and Services Act and the organisation of which is determined by the provider of the video-sharing platform, including through the use of automated methods and algorithms and in particular through display, tagging and sequencing.

5.8.2.2. VSP provider

Article 2 (2) of the Executive Order on Video-Sharing Platform Services defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “A provider of a video-sharing platform service means a natural or legal person providing a video-sharing platform service.”

5.8.2.3. User-generated video

Article 51 a, paragraph 4 of the Amended Act defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:

A user-generated video is a set of live images, with or without sound, that form an individual part, regardless of its length, created by a user and uploaded to a video-sharing platform by that user or by any other user.

5.8.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.8.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.8.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides other additional relevant information about the measures and concepts at stake.

5.8.3.1. General provisions

Prohibitions related to discrimination, incitement to hatred, protection of minors and commercial communications stem from legislative acts (such as the Criminal Code, the Marketing Act and the Advertising Executive Order). It should be noted that there is no explicit legal definition provided in Danish legislation for “content which may impair the physical, mental or moral development of minors”. There are, however, provisions in the Marketing Act and the Advertising Executive Order that specifically protect children and young people, and refer to requirements for commercial intent to be disclosed. There are also references in the Data Protection Act, relative to the protection of the data of minors, as well as provisions in the Criminal Code relating to the unlawful forwarding of information or pictures relating to another person’s private life or other pictures of the person in question in circumstances which can obviously be expected to be withheld from the public.

The Executive Order on Video-Sharing Platform Services provides for obligations of VSPs stemming directly from the AVMSD, and recalling the relevant provisions of legislative acts, such as the Criminal Code, in the following manner:

§11. 1. Providers of video-sharing platform services (jf. § 8, 1) shall take appropriate measures to protect minors from programmes, user-generated videos, advertisements, sponsorships and product placement that may harm their physical, mental or moral development.



2. *Video-sharing platform service providers shall take appropriate measures to protect the public from programmes, user-generated videos, advertising, sponsorship and product placement that encourage violence or hatred against a group of persons or a member of a group for any of the reasons referred to in Article 21 of the EU Charter of Fundamental Rights.*

3. *Providers of video-sharing platform services shall take appropriate measures to protect the public from programmes, user-generated videos, advertisements, sponsorship and product placement, the disclosure of which constitutes a criminal offence in connection with public incitement to commit terrorist acts as referred to in section § 114, para 1 of the Criminal Code, offences in connection with child pornography as referred to in section 235, subsection. 1 of the Criminal Code and offences in connection with racism and xenophobia as referred to in section 266 b of the Criminal Code.*

The Executive Order on VSPs, in Article 12, further elaborates on the obligations related to measures against harmful and illegal content, and reads:

§12. Measures pursuant to §11 include, due to relevance:

(...)

(4) Establishment and maintenance of systems for age control of users of video-sharing platforms with regard to content that may harm the physical, mental or moral development of minors.

(...)

(6) Ensuring parental control systems managed by the end user with respect to content that may harm the physical, mental or moral development of minors.

(...)

(8) Ensuring effective measures and tools to promote media awareness and launch information campaigns aimed at users about these measures and tools.

2. In order to protect minors in accordance with section 11 (1), the most harmful content must be subject to the strictest access control measures.

3. Personal data of minors collected or otherwise generated by providers of video-sharing platform services in accordance with the age control and parental control systems referred to in paragraphs 1, (4) and (6), may not be processed for commercial purposes such as direct marketing, profiling and behavioural advertising.”

Relative to commercial communications, Articles 13 and 14 of the Executive Order on VSPs provides for the obligation of VSPs to respect the obligations stemming from the AVMSD, as follows:

§13.1. Providers of video-sharing platform services, jf. § 8 (1), must comply with the requirements (...) in respect to advertising, sponsorship and product placement marketed, sold or organised by the providers.



2. Advertising, sponsorship and product placement must be clearly identifiable as such: covert advertising, sponsorship and product placement are prohibited.

3. Subliminal techniques must not be used in advertising, sponsorship or product placement.

4. Advertising, sponsorship and product placement must not:

(1) damage respect for human dignity;

(2) contain or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;

(3) encourage behaviour that is detrimental to health or safety; and

(4) encourage behaviour that is detrimental to environmental protection.

(...)

8. Advertising, sponsorship and product placement must not harm minors physically, mentally or morally. Advertising, sponsorship and product placement must not directly encourage minors to purchase or rent a product or service by exploiting their lack of experience or their credulity, directly encouraging them to persuade their parents or others to purchase the goods or services being advertised, exploit minors' special trust in parents, teachers or other persons or for no reason show minors in dangerous situations.

(...)

§14.1. Providers of video-sharing platform services, (...) shall take appropriate measures to meet the requirements (...), as regards advertising, sponsorship and product placement, which are not marketed, sold or organised by the providers. In this context, the limited control exercised by providers over such advertising, sponsorship and product placement must be taken into account.

2. Measures pursuant to para. 1 include, as appropriate:

1) Inclusion and use as part of the video-sharing platform services' general terms and conditions for use of the service of the requirements for advertising, sponsorship and product placement mentioned in §13 (2-8).

2) A feature that allows users who upload user-generated videos to indicate whether such videos, as far as they know or can reasonably be expected to know, contain advertising, sponsorship and product placement.

3. Providers shall inform users whose programmes and user-generated videos contain advertising, sponsorship and product placement, provided that information is provided via the function mentioned in (2), or if the provider is aware that programmes and user-generated videos contain advertising, sponsorship and product placement.

According to the Amending Act, the Minister of Culture lays down rules related to the obligations of VSPs relative to appropriate measures to protect minors from harmful



content. In this connection, the Minister of Culture lays down rules that minors' personal data, which is collected or generated by VSP providers, may not be processed for commercial purposes.

5.8.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, no specific details are provided.

5.8.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, the aforementioned §13 of the Executive Order on VSPs stipulates the obligations, relative to the Marketing Act, without further specifications.

5.8.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, no specific details are provided.

5.8.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the general provisions, the Amending Act provides for this in the aforementioned Article 12 (2) without further specifications.



5.8.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the Amending Act provides for this in the aforementioned Article 12 (3).

5.8.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, the Amending Act provides for this in the aforementioned Article 12 (4) and (8-2) of the Executive Order on VSPs, without further specifications.

5.8.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 12 (5) of the Executive Order on VSPs transposes this obligation in reference to obligations from its Article 11, without further specifications.

5.8.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 12 (6) of the Executive Order on VSPs transposes these obligations verbatim, ensuring parental control systems managed by the end user with respect to content that may harm the physical, mental or moral development of minors, without further specifications.



5.8.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 12 (7) of the Executive Order on VSPs transposes these obligations verbatim, without further specifications.

5.8.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 12 (8) of the Executive Order on VSPs establishes these obligations, without further specifications.

5.8.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 12 (8-3) of the Executive Order on VSPs establishes these obligations, without further specifications.

5.8.3.13. Other relevant provisions related to protection of minors

The Criminal Act, The Marketing Act and the Data Protection Act provide for various protective mechanisms related to minors, including protection against violence, the misuse of personal data, etc.

5.8.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

The Executive Order on VSPs stipulates directly, in Article 3 (8), that “[a]dvertising, sponsorship and product placement must not harm minors physically, mentally or morally.”



5.8.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications:

The obligations in relation to this are found in the aforementioned Article 13 of the Executive Order on VSPs, and include:

6. Advertising, sponsorship and product placement to promote the sale of alcoholic beverages shall not be directed specifically at minors and shall not encourage the excessive consumption of such beverages.

There are no specific obligations regarding HFSS foods. But there are specific obligations regarding the marketing of alcohol products to minors, stemming from the aforementioned Marketing Act, referring to restrictions related to commercial practices directed at children and young people, which must not directly or indirectly incite them to violence or other dangerous or inconsiderate behaviour, nor make unwarrantable use of violence, fear or superstition in order to influence them.

5.8.3.16. Other relevant information

Legislative acts, including the Criminal Code, cover issues such as incitement to hatred, and penalties are relevant to social media, including public provocation to commit a terrorist offence (Article 114 e), the dissemination and possession of pornographic material by persons under the age of 18 (Article 235), libel (Articles 267-271), the protection of privacy (Article 264d), threats (Article 266), encouraging crimes (Article 136), incitement to commit acts of terrorism (Article 114e, etc.), facilitating, when media can be held liable, derogatory statements to groups and offences concerning racism and xenophobia (Article 266b). Relevant provisions are also found in the Marketing Act, as stipulated above.

5.8.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

Article 15 of the Executive Order on VSPs transposes the text of the revised AVMSD verbatim, without further details:



1. Measures in accordance with §§ 11, 12 and 14 must be feasible and proportionate and take into account the size of the video-sharing platform service and the nature of the service offered.
2. The measures shall not lead to prior control measures or upload filtering of content which does not comply with the Directive of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

5.8.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.8.5.1. Regulatory body

The competent regulatory body to a certain extent is the Radio and Television Board.¹⁷⁰

5.8.5.2. Existence of a registration/notification system

While Article 15 of the Executive Order stipulates, in the verbatim transposition of the AVMSD, that the measures must be feasible and proportionate and take into account the size of the VSP service and the nature of the service offered, without prior control measures or upload filtering of content. It envisages the Minister of Culture laying down more detailed rules on registration and rules deciding when providers of VSP services fall under Danish authority. In that respect, Article 10 stipulates:

Media service providers that provide on-demand audio services, visual programme activities covered by §2 (1) no. 4, and which fall under the Danish authority, must also be registered with the Radio and Television Board.

¹⁷⁰ <https://slks.dk/omraader/medier/>.



The Minister of Culture also lays down rules for when the provision of image programmes, user-generated videos or both constitute an essential function in a VSP service.

5.8.5.3. Compliance, enforcement and sanctioning powers

The Radio and Television Board is established by the law and has the task, regarding VSP services, of prosecuting violations of the law and regulations; it decides on measures relating to the protection of minors and the public from content that incites violence or hatred or acts of terrorism, and against content that includes child pornography, racism or xenophobia. It must also decide on measures and provisions regarding the identification and content of advertisements, sponsorship and product placement on VSP services and, where necessary it must decide on the cessation of the company.

Furthermore, the Danish Data Protection Agency is the independent authority that supervises compliance with the rules on protection of personal data. It says on their website that they “provide guidance and advice as well as deal with complaints and make inspections”.

The Danish Intelligence and Security Centre under the Danish Police has a special Cyber Centre that specifically addresses intelligence and investigation tasks relating to cyber threats affecting national security. The Cyber Centre co-operates closely with the Centre for Cyber Security under the Danish Defence Intelligence Service and the National Cyber Crime Centre (NC3) under the Danish National Police. Moreover, in Denmark, the police have the right as well as the obligation to press charges against an individual if there are grounds for suspicion that the individual has committed a criminal act.

Finally, according to Article 25(1) of the Marketing Practices Act, the Consumer Ombudsman monitors the extent to which businesses are complying with the Marketing Practices Act as well as the Executive Orders issued pursuant to the Marketing Practices Act.

5.8.5.4. Development of self- or co-regulatory codes or schemes

While there are no direct references to self- and co-regulatory schemes, according to the Amending Act, the Minister of Culture has appointed the Media Council for Children and Young People to guide parents and others, as well as service providers, audiovisual media services, on the suitability of films, programmes, etc. for children and young people. The role of the Media Council is also to provide information and advice on the digital education of children and young people, including on the digital security, well-being and rights of children and young people.

Besides serving as a coordinator for the Safer Internet Centre Denmark (SIC DK), the key objective of the awareness centre (MCDK) is to establish partnerships with stakeholders (e.g., industry, NGOs, educational institutions), to advocate youth perspectives in national and international forums, and to devise events, dialogue campaigns and tools to empower



and raise awareness among children and young people, professionals, parents and the public in general.

5.8.5.5. Out-of-court redress mechanisms for users

Article 16 of the Executive Order stipulates that the Radio and Television Board monitors the extent to which VSP service providers take appropriate measures in accordance with the rules. According to Article 17, the Radio and Television Board deals with complaints in the event of disagreement between VSP service providers and users about the appropriate measures that the providers are obliged to take in accordance with the rules.

5.8.5.6. Rights before a court for users

No specific provision of the Amending Act deals with this issue, but nothing prevents users from asserting their rights before a court.

5.8.6. Studies, reports and research

- Criminal liability for the content of online media – About intermediary responsibility for media not covered by the Media Liability Act (*Strafansvar for indholdet af onlinemedier: Om formidleransvar for medier, der ikke er omfattet af medieansvarsloven*), April, 2016.¹⁷¹
- Analysis of social media responsibilities. Cases of sharing homicide videos, suicide notes, nude photos and assaults give rise to questions: Who is responsible for the content that is spread on social media – and what responsibility do we in Denmark want social media to have? (*Analyse af desociale mediersansvar Sager om deling af drabsvideoer, selvmordsbreve, nøgenbilleder og overgreb giver anledning til at stillespørgsmålene*), August 2019.¹⁷²
- Recommendations on better protection on social media (*Lovgivning for sociale Medier*), November 2019.¹⁷³

¹⁷¹ <https://portal.findresearcher.sdu.dk/en/publications/strafansvar-for-indholdet-af-onlinemedier-om-formidleransvar-for->

¹⁷² <https://www.ft.dk/samling/20182/almdelel/REU/bilag/105/2077890/index.htm>.

¹⁷³ https://digitaltansvar.dk/wp-content/uploads/2019/12/Anbefalinger-til-lovgivning_Digitalt-Ansvar-nov.-2019.pdf.



5.8.7. Data compilation

This factsheet is based on data compiled by Mie Oehlenschläger, External Lecturer/Independent Consultant.



5.9. EE – Estonia – National legal summary¹⁷⁴

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the Draft Act Amending the Media Services Act and Related Acts (draft AVMS Law).

5.9.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft Act Amending the Media Services Act and Related Acts (*Meediateenuste seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus*).¹⁷⁵

5.9.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 29. Definition of the main concepts related to VSPs¹⁷⁶

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

¹⁷⁴ The factsheet on Estonia incorporates the feedback received from Tais Vagrõõm, Chief Specialist of the Entrepreneurship Division at the Consumer Protection and Technical Regulatory Authority during the checking round with the national regulatory authorities.

¹⁷⁵ <http://eelroud.valitsus.ee/main/mount/docList/04de3b98-fa6a-4413-86ff-039d529993a7?activity=2#daGXbUHw>.

¹⁷⁶ Whilst the terms “Principal purpose”, “Dissociable section” and “Essential functionality” are not defined in the legislation, it might be worth noting that the essential aspects of these concepts are included in the Explanatory Memorandum to the draft AVMS Law, which is also part of the legislation.



Source: Estonian response to European Audiovisual Observatory standardised survey

5.9.2.1. VSP service

The draft AVMS Law defines the term “video-sharing platform service” as an information society service and includes the wording of the revised AVMSD, as follows:

A video-sharing platform service is an information society service within the meaning of the Information Society Services Act, 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 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.

5.9.2.2. VSP provider

The draft AVMS Law defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “A video-sharing platform service provider is a legal or natural person that provides a video-sharing platform service.”

5.9.2.3. User-generated video

The draft AVMS Law defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows: “User-generated video is a timed set of moving images with or without sound of any length, created by the user and uploaded to the video-sharing platform by that user or another user.”

5.9.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.9.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

The Explanatory Memorandum defines some provisions on essential functionality.

The principal purpose of the service, or of a distinct part thereof, is to provide informational, entertainment or educational programmes to the public through an electronic



communications network under the editorial responsibility of the media service provider. As an innovation, this provision of the AVMSD adds that the provision of programmes may also be only a distinct part of the service and not the main purpose of the service as a whole.

In addition, the text refers to the guidelines set out in the European Commission Guidelines (2020 C 233/02).

5.9.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.9.3.1. General provisions

The current Media Services Act provides a number of obligations for broadcasters and on-demand services related to the prohibition of incitement to hatred on the basis of sex, racial or ethnic origin, beliefs or religion. These obligations also relate to the violation of the law as well as the protection of minors, including limitations related to programmes that may harm the physical, mental or moral development of minors, watershed principles, etc.

The draft AVMS Law provides for obligations on VSPs, as follows:

Article 27. Code of conduct for transmission of audiovisual commercial communication in children's programmes

(1) Persons involved in the pursuit of media service activities and video-sharing service providers may establish a code of conduct by means of self-regulation regarding inappropriate audiovisual commercial communication, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular, those such as fat, trans-fatty acids,



salt/sodium and sugars, excessive intake of which in the overall diet is not recommended for children.

(2) The Code of Conduct referred to in subsection (1) of this section shall be established by a regulation of the minister responsible for the area if the persons engaged in the media services field or video-sharing service providers have not established that by means of self-regulation.

The draft AVMS Law further provides for the establishment, by the relevant minister, of a code of conduct for the transmission of commercial communications in children's programmes by 19 September 2021 if persons operating in the field of media and VSP services have not developed a self-regulatory code of conduct by 19 March 2021. The dates indicated will be updated according to the date of adoption of the draft AVMS Law, as after the law comes into force, the sector will be given approximately 6 months to develop a code of conduct.

5.9.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, Article 19 of the draft AVMS Law introduces these obligations in the following manner:

Article 19¹. Protection of minors and ensuring morality and legality in the provision of video-sharing platform services

(1) The service provider of a video-sharing platform shall proscribe in the terms of use of the service the making available on the video-sharing platform of programmes, user-generated videos and business announcements which:

- 1) incite violence or hatred on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, national minority, property status, birth, disability, age, sexual orientation or nationality;*
- 2) incite an offence; or*
- 3) depict child pornography.*

(2) The video-sharing platform provider shall stipulate in the terms of use that at the beginning of any programme, user-generated video or business message which may impair the physical, mental or moral development of minors, a warning shall be provided in a comprehensible manner to the viewer. During the entire programme, user-generated video or business message, the appropriate symbol of its unsuitability for minors or minor age groups must appear on the screen.



5.9.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 31¹ of the draft AVMS Law provides that:

(1) A video-sharing platform service provider shall prescribe in the terms and conditions of the service that commercial communications made available on the video-sharing platform shall comply with the set of rules for the commercial communications, including sponsorship and product placement, and with the requirements established for advertising in other Acts.

5.9.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, the draft AVMS Law, in Article 31¹ (2) and (3), introduces these obligations, as follows:

(2) The video-sharing platform provider shall ensure that a technical application is in place to enable users of the service who upload user-generated videos to indicate whether such videos contain audiovisual commercial communications, in so far as they know or can reasonably be expected to know.

(3) A video-sharing platform service provider shall explicitly inform service users of programmes and user-generated videos containing audiovisual commercial communications, provided that such commercial communications have been notified pursuant to subsection (2) of this section or the service provider is aware of the fact.

5.9.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag content to the VSP provider, Article 19¹ (3) of the draft AVMS Law refers to the protection of minors and legality in the provision of VSP services by stipulating this obligation relative to services inclusive of user-generated content and business announcements:

(3) The service provider of a video-sharing platform shall ensure the existence of a technical application by means of which service users can easily notify the service provider of the



programmes specified in subsections (1) and (2) of this section, user-generated videos and business announcements.

5.9.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which video-sharing platform providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, there are no relevant provisions in the draft AVMS Law. However, Article 19¹ (4) (5) stipulates the manner in which a VSP provider is to handle complaints, thus it was decided that there is no need to add a further obligation for VSP service providers to explain this to the users.

5.9.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 19¹ (5) of the draft AVMS Law addresses the “protection of minors and ensuring morality and legality in the provision of video-sharing platform services” by providing the following obligations:

(5) If a video-sharing platform service provider is notified of a programme, user-generated video or business message that may impair the physical, mental or moral development of minors, or is aware of this fact, it shall without undue delay add to this section the warning and symbol in accordance with paragraph 2, or ensure that the programme, user-generated video or business message is accessible by means of personal identification codes or other appropriate technical solutions only in a way that is not normally accessible to minors.

5.9.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, the provisions of Article 19¹ (3) of the draft AVMS Law apply (as seen under 1.1.3.5.). Also, Article 22 of the draft AVMS Law refers to self-regulatory mechanisms in this respect:

22. Self-regulation.

Persons involved in the pursuit of the media service activity may create on their own initiative a system the parties to which define voluntarily common recommendations and rules, establishing standards as a code of conduct with the purpose of regulating the



activities in the area and fixing the boundaries of good and bad practice to the parties. The self-regulation associations also determine voluntarily the procedure for compliance with the established rules and the liability of the parties for compliance with the rules.

5.9.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, the provisions of Article 19¹ (5) of the draft AVMS Law apply (as seen under 5.9.3.7.).

5.9.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in 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, Article 19¹ (6) of the draft AVMS Law stipulates:

A VSP service provider shall establish a transparent, easy-to-use and effective procedure for the processing and resolution of complaints of service users submitted to him or her in connection with the implementation of subsections (4) and (5) of this section.

5.9.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, there are no relevant provisions in the draft AVMS Law.

5.9.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 19² of the draft AVMS Law states:

19². Protection of personal data of minors



A media service provider and a VSP service provider shall not process personal data of minors collected or otherwise obtained in the course of the use of technical measures specified in subsections 19 (5) and 19¹ (5) of this Act for commercial purposes, such as direct marketing, profile analysis or behavioural advertising.

5.9.3.13. Other relevant provisions related to the protection of minors

N/A.

5.9.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

The Advertising Act provides for limitations and obligations related to broadcasters and video on demand providers, stemming from the old text of the AVMSD, including provisions related to minors.

5.9.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The Advertising Act prohibits the advertising of alcohol. The self-regulatory mechanisms of the Estonian Broadcasters' Union and Estonian Media Alliance also address issues related to responsible advertising policy in children's programmes.

5.9.3.16. Other relevant information

The Constitution provides for equality of all before the law and the prohibition of discrimination.

5.9.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.



There are no provisions in the draft AVMS Law in this regard.

5.9.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as to the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.9.5.1. Regulatory body

The competent regulatory body is the Consumer Protection and Technical Regulatory Authority (ECTRA).¹⁷⁷

5.9.5.2. Existence of a registration/notification system

The draft AVMS Law, in its Article 47, provides for a notification obligation for on-demand audiovisual media service providers and VSP providers, including the obligation to submit information related to that service, such as the name and web page, an indication of conditions required by the law, and reference to ECTRA as the state supervisory authority. Notification has to be done through the Estonian Register of Economic Activities or through a notary.

5.9.5.3. Compliance, enforcement and sanctioning powers

Current media legislation gives ECTRA supervision over compliance with the law, with plans for the extension of its mandate, except for the requirements provided for in Article 15 of the current Media Act. Further, Article 55 provides for specific measures of state supervision, as follows:

¹⁷⁷ <https://www.ttja.ee/et>.



Upon execution of the state supervision provided for in this Act a law enforcement agency may apply specific measures of state supervision provided for in § 30 of the Law Enforcement Act on the basis of and pursuant to the procedure provided for in the Law Enforcement Act.

5.9.5.4. Development of self- or co-regulatory codes or schemes

The aforementioned Estonian Broadcasters' Union and Estonian Media Alliance are the self-regulatory mechanisms in Estonia. Further, ECTRA holds consultations with all stakeholders and with the Ministry of Culture as part of its work.

5.9.5.5. Out-of-court redress mechanisms for users

The Consumer Protection Act establishes the procedure to bring complaints before the Consumer Disputes Committee, as well as the committee's organisation and supervision of consumer protection and liability for violations of the Act. The resolution of a dispute arising from a contract between a consumer and a trader by the Consumer Disputes Committee is not deemed to be an administrative proceeding within the meaning of the Administrative Procedure Act.

5.9.5.6. Rights before a court for users

No specific provision of the draft AVMS Law deals with this issue, but nothing prevents users from asserting their rights before a court. However, a person who feels that his or her rights have been violated or that his or her freedoms are restricted by an administrative act or in the course of administrative proceedings may file a challenge to the Director General of ECTRA before a court (Administrative Procedure Act, Article 71).

5.9.6. Studies, reports and research

- 2019 Ministry of Culture study on the situation and trends in media policy.¹⁷⁸

5.9.7. Data compilation

This factsheet is based on data compiled by Dr. Andres Jõesaar, Associate Professor at Tallinn University.

¹⁷⁸ https://www.kul.ee/sites/kulminn/files/2019_meediapoliitika_olukord_arengusuunad_aruanne.pdf.



5.10.ES – Spain – National legal summary¹⁷⁹

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the draft General Law on Audiovisual Communication (draft Law).

5.10.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft General Law on Audiovisual Communication (*Ley General de Comunicación Audiovisual*)¹⁸⁰

5.10.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 30. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.

¹⁷⁹ The factsheet on Spain incorporates feedback received from Pedro Domingo Martín Contreras, Officer at the Directorate of Telecommunications and Audiovisual at the National Commission of Markets and Competition (*Comisión nacional de los mercados y la competencia*, CNMC), during the checking round with the national regulatory authorities.

¹⁸⁰ <https://avancedigital.mineco.gob.es/es-es/Participacion/Paginas/DetalleParticipacionPublica.aspx?k=355>.



“Essential functionality”	No.
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Source: Spanish response to European Audiovisual Observatory standardised survey

5.10.2.1. VSP service

Article 2.12. of the draft Law defines the term “video-sharing platform service”, by transposing the text of the revised AVMSD verbatim, as follows:

(VSP) service: service where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to provide, to the general public, through electronic communications networks, programmes, videos generated by users or both, over which the platform provider has no editorial responsibility, in order to inform, entertain or educate, as well as issue commercial communications, and whose organisation is determined by the provider, among other means, with automatic algorithms, in particular through displaying, tagging and sequencing.

5.10.2.2. VSP provider

Article 2.17 of the draft Law defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “[a] natural or legal person who provides the VSP service”.

5.10.2.3. User-generated video

Article 2.20 of the draft Law defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:

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.

5.10.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.10.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.10.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.10.3.1. General provisions

According to Article 85 of the draft Law, VSP providers need to respect the general provisions included in Title I of the draft Law regarding the protection of human dignity, incitement to hatred, respect for constitutional rights (particularly the right to honour and image, the right of reply and the right to privacy and data protection); incitement to commit acts of terrorism, crimes relating to child pornography or crimes of a racist and xenophobic nature; the protection of pluralism, gender equality, the rights of persons living with disabilities; accuracy, media literacy, and self and co-regulation, as follows:

Article 85. General principles of the provision of (VSP services) (...).

The providers of the (VSP) service will guarantee the observance of the principles of Title I of this Law in their services.

General provisions are also included in Article 89 of the draft Law:

Article 89. Obligations of protection of the general public against certain audiovisual content.

1. Video-sharing platform will adopt the following measures to protect the general public from the programmes, the videos generated by users and the audiovisual commercial communications that violate the provisions of Article 4:

a) Establish and apply easy-to-use systems that allow service users to rate the content that may include images or scenes that, without violating the provisions of Article 4.2 and 4.3, are likely to hurt sensitivity.

b) Establish and operate transparent and user-friendly mechanisms that allow users to notify or indicate to the corresponding provider any content that violates the provisions of Article 4.



- c) Establish and operate systems through which service providers explain to users the action that has been taken in relation to the indications referred to in the preceding paragraph.*
- d) Establish and apply transparent, efficient and user-friendly procedures for the treatment and resolution of user complaints to service providers, in relation to the application of the measures referred to in the preceding paragraphs.*
- e) Facilitate effective media literacy measures and tools and inform users of the existence of these measures and tools.*

Article 4 of the draft Law stipulates that:

- 1. Audiovisual communications will be respectful of human dignity and constitutional values.*
- 2. Audiovisual communications will not incite violence, hatred or discrimination against a group or members of a group based on sex, race, colour, ethnic or social origins, genetic characteristics, language, religion or beliefs, political opinions or of any other type, belonging to a national minority, heritage, birth, disability, age, sexual orientation or nationality.*
- 3. Audiovisual communications will respect a person's honour, privacy and image and will guarantee the rights of rectification and reply, (...).*
- 4. Audiovisual communications will not contain a public provocation to commit a crime of terrorism, child pornography or of a racist and xenophobic nature, in the terms and without prejudice to the provisions of the Penal Code.*

General provisions regarding the protection of minors are also included in Article 87 of the draft Law, as follows:

Article 87. Obligations to protect minors from certain audiovisual content.

- 1. Video-sharing platform service providers will take the following measures to protect minors from certain audiovisual content:*
 - a) Establishing and applying user-friendly systems that allow users to rate content that may harm the physical, mental or moral development of minors.*
 - b) Establishing and operating transparent and user-friendly mechanisms that allow users to notify or indicate to the corresponding provider the directly accessible content that may harm the physical, mental or moral development of minors.*
 - c) Facilitating parental control systems controlled by the end user with respect to content that may harm the physical, mental or moral development of minors.*
 - d) Including in the terms of service and implementing digital identification instruments for age verification in accordance with the provisions of Article 88 to protect minors from programmes, user-generated videos and audiovisual commercial communications that may harm their physical, mental or moral development and, in any case, prevent access to scenes that contain gratuitous violence or pornography.*
 - e) Establishing and applying transparent, effective and easy-to-use procedures for the treatment and resolution of user complaints to service providers, in relation to the application of the measures referred to in the preceding paragraphs.*



- f) Establishing and operating systems through which service providers explain to users the status of the claims referred to in the preceding paragraph.*
- g) Facilitating effective media literacy measures and tools and informing users of the existence of these measures and tools.*

5.10.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, the draft Law provides no further details on this point, but Article 87 provides for obligations of the VSP service providers relevant to the protection of minors, such as user-friendly systems that allow users to rate content that may harm the physical, mental or moral development of minors, user-friendly mechanisms that allow users to notify or indicate to the corresponding provider any directly accessible content that may harm minors.

5.10.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by VSP providers, Article 90.2.(a) of the draft Law directly transposes the obligations from the revised AVMSD in relation to Section 1 of Chapter IV of Title VI of the draft Law, which includes provisions on general commercial communications:

The providers of (VSPs) will guarantee that the audiovisual commercial communications not commercialised, sold or organised by themselves nevertheless comply with the provisions of Section 1 of Chapter IV of Title VI through the following measures:

- a) Include and implement in the terms of service the requirements established in Section 1 of Chapter IV of Title VI for commercial audiovisual communications not marketed, sold or organised by said providers.*

5.10.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 90.2.(b) of the draft Law provides for these obligations:



b) Provide a functionality for users who upload videos to declare whether in their understanding, or as far as it is reasonably expected that their understanding reaches, said videos contain audiovisual commercial communications.

5.10.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the general provisions, Article 89.1.(a) and (b) of the draft Law transposes the obligations stemming from the text of the revised AVMSD:

(The providers of (VSP services) will adopt the following measures to protect the general public from programmes and videos generated by users and any audiovisual commercial communications that violate the provisions of Article 4.)

a) Establish and apply easy-to-use systems that allow service users to rate content that may include images or scenes that, without violating the provisions of Article 4.2 and 4.3, are likely to harm sensitivity.

b) Establish and operate transparent and user-friendly mechanisms that allow users to notify or indicate to the corresponding provider any content that violates the provisions of Article 4.

Regarding the protection of minors, these provisions are set out in Article 87.1.(a) and (b):

Article 87. Obligations to protect minors from certain audiovisual content.

1. Video-sharing platform service providers will take the following measures to protect minors from certain audiovisual content:

a) Establishing and applying user-friendly systems that allow users to rate content that may harm the physical, mental or moral development of minors.

b) Establishing and operating transparent and user-friendly mechanisms that allow users to notify or indicate to the corresponding provider any directly accessible content that may harm the physical, mental or moral development of minors.

5.10.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the proposed legislation, in Article 89.1.(c) transposes the obligations from the revised AVMSD by obliging VSP service providers to:



c) Establish and operate systems through which service providers explain to users the effect that has been given to the indications referred to in the previous paragraph.

Regarding the protection of minors, this provision is set in Article 87.1.f):

Establishing and operating systems through which service providers explain to users the effect that has been given to the claims referred to in the preceding paragraph.

5.10.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 87.1.(d) of the draft Law directly transposes these obligations from the revised AVMSD by obliging VSP service providers to:

Include in the terms of service and implement digital identification instruments for age verification in accordance with the provisions of Article 88 to protect minors from programmes, user-generated videos and commercial audiovisual communications that may harm their physical, mental or moral development and, in any case, prevent access to scenes that contain gratuitous violence or pornography.

5.10.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content for the protection of minors, the draft Law, in Article 87.1.(a) directly transposes the obligations of the VSP service providers from the revised AVMSD, as follows:

Establish and apply user-friendly systems that allow users to rate content that may harm the physical, mental or moral development of minors.

Regarding the protection of the general public, this provision is set out in Article 89.1.(a):

Video-sharing platform service providers will adopt the following measures to protect the general public from programmes, videos generated by users and audiovisual commercial communications that violate the provisions of Article 4:

a) Establish and apply easy-to-use systems that allow service users to rate content that may include images or scenes that, without violating the provisions of Article 4.2 and 4.3, are likely to harm sensitivity.



5.10.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 87.1.(c) of the draft Law provides for this, as follows: “Facilitate parental control systems controlled by the end user with respect to content that may harm the physical, mental or moral development of minors.”

5.10.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures for the protection of minors, Article 87.1.(e) of the draft Law directly transposes the text of the revised AVMSD:

Establish and apply transparent, effective and user-friendly procedures for the treatment and resolution of user complaints to service providers, in relation to the application of the measures referred to in the preceding paragraphs.

Regarding the protection of the general public, this provision is set out in Article 89.1.(d):

Establish and apply transparent, efficient and user-friendly procedures for the treatment and resolution of user complaints to service providers, in relation to the application of the measures referred to in the preceding paragraphs.

5.10.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, the proposed legislation for the protection of minors, in Article 87.1.(g), obliges VSP service providers in the same manner as envisaged by the revised AVMSD:

Provide effective media literacy measures and tools and make users aware of these measures and tools.

Regarding the protection of the general public, this provision is set out in Article 89.1.(e):



Provide effective media literacy measures and tools and make users aware of these measures and tools.

5.10.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 88 of the draft Law directly transposes these obligations from the revised AVMSD:

The personal data of minors collected or otherwise generated by (VSP) providers in accordance with the provisions of this Title shall not be processed for commercial purposes, such as direct marketing, profiling or personalised advertising based on in behaviour.

5.10.3.13. Other relevant provisions related to the protection of minors

N/A.

5.10.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

N/A.

5.10.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

There are currently no legal obligations or limits regarding minors' exposure to advertising of HFSS foods. Current legislation applicable to AVMS providers provides for criteria relevant to the prohibition of television advertising of alcoholic beverages. Article 14.4 of the draft Law encourages the adoption of self-regulatory instruments regarding the advertising of these products and foods in audiovisual media.

Article 14. Self-regulation and co-regulation codes of conduct.

(...)

4. In any case, codes of conduct will be promoted in the following areas:

(...)

d) Effective reduction of the exposure of minors to audiovisual commercial communications related to foods and beverages with a high content of salt, sugars, fat, saturated fats or trans fatty acids, or that do not comply for other reasons with national or international nutritional guidelines.



- e) *Effective reduction of the exposure of minors to audiovisual commercial communications related to alcoholic beverages.*
 - f) *Protection of minors from exposure to audiovisual commercial communications related to the promotion of gambling.*
- (...)

Besides, Article 90.4 regarding the obligations of VSPs related to commercial communications, sets out the following:

Self-regulation will be promoted, through the elaboration of codes of conduct, in order that video-sharing platform service providers effectively reduce the exposure of minors to audiovisual commercial communications related to foods and beverages that contain nutrients or substances with a nutritional or physiological effect, in particular fats, trans fatty acids, salt or sodium and sugars, of which an excessive intake is discouraged in the general diet and, in particular, to avoid said audiovisual commercial communications highlighting the positive qualities of its nutritional aspects.

5.10.3.16. Other relevant information

N/A.

5.10.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

Article 91 of the draft Law establishes that government decrees may set out further details regarding the scope and enforceability of obligations depending, among other things, on the size of the VSP service, the volume of users, the nature of the content or type of service offered by different categories of VSP providers:

Article 91. Scope and proportionality of the obligations
Through regulatory development, the scope of each of the measures listed in Articles 87, 89 and 90 and how to enforce them on VSP providers may be detailed, depending on, among others, their size, volume of users, nature of the content or type of service offered.



5.10.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.10.5.1. Regulatory body

The competent regulatory body for VSPs is the National Authority for Markets and Competition (CNMC).¹⁸¹

Besides, the Ministry of Economic Affairs and Digital Transformation retains some competences in this regard, such as, the National Registry, in Article 151.1.(d):

The Ministry of Economic Affairs and Digital Transformation is the competent audiovisual authority in the terms provided in this Law and, in any case, it will exercise the following powers:

d) Keeping of the State Registry of audiovisual communication service providers and video-sharing platform service providers.

5.10.5.2. Existence of a registration/notification system

According to Article 86, VSP providers must register in the general audiovisual Registry established in Article 38 of the draft Law:

Article 86. Registration in the National Registry.

The providers of the video-sharing platform service providers must register in the Register provided for in Article 38.

Article 38. State registry of audiovisual communication service providers, video-sharing platform service providers and audiovisual communication service aggregation service providers.

1. The following providers will be registered in the Registry provided for in this Article:

(...)

¹⁸¹ <https://www.cnmc.es/>.



e) Providers of (VSP services).

5.10.5.3. Compliance, enforcement and sanctioning powers

Article 92 of the draft Law provides for supervision and control over VSP providers by CNMC:

1. The National Commission of Markets and Competition will control compliance by video-sharing platform service providers through the platform of (their legal) obligations.

At the same time, the Ministry of Economic Affairs and Digital Transformation is in charge of controlling the notification and registration of VSPs in the National Registry.

5.10.5.4. Development of self- or co-regulatory codes or schemes

Current self-regulatory schemes include *Confianza Online*, with its ethical code covering the protection of personal data, e-commerce and its consumers, digital advertising and the protection of minors and adolescents. Furthermore, there is a trust mark (label) system, which involves businesses being assigned a label according to the assessment of their compliance various criteria. In addition, there is an online claims resolution system, including the *AUTOCONTROL* Advertising Jury, for claims related to commercial communications, privacy, data protection and the protection of minors and the National Consumer Arbitration Council, for those relating to consumers disputes in the field of e-commerce. There is also the PAOS (Advertising, Activity, Obesity and Health) Code, a co-regulatory instrument regarding the advertising of food and beverages to minors.

Articles 87.2, 89.2 and 90.4 of the draft Law contain a general reference to the need to promote self and co-regulation schemes regarding the activities of VSP providers. Article 87.2 states that: “[f]or the purposes of applying the measures provided for in the previous section, the use of co-regulation will be encouraged (...)”.

Article 89.2 establishes that: “[f]or the purposes of applying the measures provided for in the previous section (quoted above), the use of co-regulation will be encouraged”.

Article 90.4 states that:

Self-regulation will be promoted, through the elaboration of codes of conduct, in order that the providers of the (VSP) service effectively reduce the exposure of minors to audiovisual commercial communications related to food and beverages that contain nutrients or substances with a nutritional or physiological effect, in particular fats, trans fatty acids, salt or sodium and sugars, of which an excessive intake is discouraged in the general diet and, in particular, to avoid said audiovisual commercial communications highlighting the positive qualities of its nutritional aspects.



5.10.5.5. Out-of-court redress mechanisms for users

No specific provision of the draft Law deals with this issue.

5.10.5.6. Rights before a court for users

No specific provision of the draft Law deals with this issue.

5.10.6. Studies, reports and research

N/A.

5.10.7. Data compilation

This factsheet is based on data compiled by Joan Barata Mir, Fellow at the Cyber Policy Center – Stanford University.



5.11.FI – Finland – National legal summary¹⁸²

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are implemented in the Act on Electronic Communications Services (ECS Act) and in the Act on Audiovisual Programmes (AV Act).

5.11.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Act on Electronic Communications Services (*laki sähköisen viestinnän palveluista*, 917/2014);¹⁸³
- Act on Audiovisual Programmes (*kuvaohjelmalaki* 710/2011);¹⁸⁴
- Act on Amendment of the Act on Audiovisual Programmes (*laki kuvaohjelmalain muuttamisesta* 1209/2020);¹⁸⁵
- Consumer Protection Act (*kuluttajansuojalaki* 38/1978);¹⁸⁶
- Tobacco Act (*tupakkalaki* 549/2016);¹⁸⁷
- Alcohol Act (*alkoholilaki* 1102/2017);¹⁸⁸
- Medicines Act (*lääkelaki* 395/1987);¹⁸⁹
- Criminal Code (*rikoslaki* 39/1889);¹⁹⁰
- Data Protection Act (*tietosuojalaki* 1050/2018).¹⁹¹

¹⁸² The factsheet on Finland incorporates feedback received from Eliisa Reenpää, Legal Counsel at the Finnish Transport and Communications Agency (Traficom) and Erika Lauri, Inspector General at the National Audiovisual Institute (KAVI) during the checking round with the national regulatory authorities.

¹⁸³ <https://www.finlex.fi/fi/laki/ajantasa/2014/20140917>.

¹⁸⁴ <https://www.finlex.fi/fi/laki/alkup/2011/20110710>.

¹⁸⁵ <https://www.finlex.fi/fi/laki/alkup/2011/20110710>.

¹⁸⁶ <https://finlex.fi/fi/laki/ajantasa/1978/19780038>.

¹⁸⁷ <https://www.finlex.fi/fi/laki/alkup/2016/20160549>.

¹⁸⁸ <https://www.finlex.fi/fi/laki/ajantasa/2017/20171102>.

¹⁸⁹ <https://www.finlex.fi/fi/laki/ajantasa/1987/19870395>.

¹⁹⁰ <https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001>.

¹⁹¹ <https://www.finlex.fi/fi/laki/ajantasa/2018/20181050>.



5.11.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 31. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Finnish response to European Audiovisual Observatory standardised survey

5.11.2.1. VSP service

The ECS Act, in section 3 (1)(36a), defines the term “video-sharing platform service” by transposing the text of the AVMSD, as follows:

Video-sharing platform service means a service or a dissociable section of a service offered to the general public as part of business operations/activities and where the principal purpose is to provide the general public with programmes or user-generated videos for which the video-sharing platform provider does not have editorial responsibility; and the displaying, tagging, sequencing, and other organising of which are determined by the video-sharing platform provider by automatic means, algorithms or other means.

5.11.2.2. VSP provider

The ECS Act, in section 3 (1)(36b), defines the term “video-sharing platform provider” by transposing the wording of the revised AVMSD verbatim, as follows: “Video-sharing platform provider means the natural or legal person who provides a video-sharing platform service.”



5.11.2.3. User-generated video

The ECS Act, in section 3 (1)(7a) defines the term “user-generated video” by using the word “unit” with the text of the revised AVMSD, as follows: “User-generated video means a unit comprised of primarily moving images with sound that is created by the user and uploaded to a video-sharing platform by the user or any other user.”

5.11.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret these concepts. However, the definition from the revised AVMSD has been included in the government proposal for the ECS Act, page 172, as follows:

According to Recital 3 of the Directive, the Directive should remain applicable only to those services the principal purpose of which is the provision of programmes in order to inform, entertain or educate. The principal purpose requirement should also be considered to be met if the service has audiovisual content and form which are dissociable from the main activity of the service provider, such as stand-alone parts of online newspapers featuring audiovisual programmes or user-generated videos where those parts can be considered dissociable from their main activity. However, according to Recital 3, a service is not considered to be an audiovisual media service when the media content provided only complements and is closely linked to the main activity, such as video content presented in a separate section of online magazines when it relates to the content in written form. A service complementary to the main activity would be, for example, news material presented in a separate section of online magazines that supports the news material published in written form. The definition of an audiovisual media service corresponds to Article 1 (1)(a) of the Directive.

5.11.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret these concepts. The definition from the revised AVMSD has been included in the government proposal for the ECS Act, page 172, as follows:

The definition of a video-sharing platform service would cover, according to Recital 5 of the Directive, also social media services if the provision of programmes and user-generated videos constitutes an essential functionality of those services. The provision of programmes and user-generated videos could be considered to constitute an essential functionality of the social media service if the audiovisual content is not merely ancillary to, or does not constitute a minor part of, the activities of that social media service. The Commission will provide further guidance on the practical application of the criterion of the essential functionality of a video-sharing platform service. Where a dissociable section of a service



constitutes a video-sharing platform, only that section should be covered by provisions on video-service platforms, and only as regards programmes and user-generated videos.

5.11.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.11.3.1. General provisions

Regarding general provisions on obligations and measures imposed on VSP providers, the ECS Act, section 226a states the following:

This [26a] Chapter, Section 214 Subsection 1 [of the Act on Electronic Communications Services], Chapter 2 Section 2 of the Consumer Protection Act, Chapter 9 of the Tobacco Act, Chapter 7 of the Alcohol Act and Sections 91, 91a to 91c, 92a and 93a of the Medicines Act shall apply to the video-sharing platform service that is provided by a video-sharing platform provider established in Finland.

Chapter 26a of the ECS Act contains the provisions applicable to video-sharing platform services, while section 214 provides the general principles regarding marketing. According to its subsection 1, marketing shall be readily recognisable.

Also, the Consumer Protection Act, Chapter 2, section 2, provides provisions on good marketing practices. According to subsection 1, marketing is considered to be against good practice if it is clearly contrary to values that are generally accepted in society and in particular if:

- 1) it violates human dignity or religion or political beliefs;*
- 2) there is discrimination based on gender, age, ethnic or national origin, nationality, language, state of health, disability, sexual orientation or any other factor related to a person; or*



3) it approves of activities which endanger health, public safety or the environment without any objective justification for presenting such activities in relation to the goods that are marketed.

Subsection 2 stipulates that marketing that is targeted at minors or which generally reaches minors is considered to be against good practice, in particular, if it exploits a minor's inexperience or credulity, if it is likely to affect adversely the minor's development or if it seeks to ignore parent's possibility to play a full role in raising their children. When assessing whether marketing is against good practice, the age and level of development of the child and other circumstances are taken into account.

Also, the marketing provisions of the Tobacco Act, Alcohol Act and Medicines Act apply to VSP services.

5.11.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in Section 226 of the ECS Act, in section 226c, subsection 1, paragraph 1 provides for this, in the following manner:

The video-sharing platform service shall have terms and conditions. The video-sharing platform provider shall include in the terms and conditions provisions:

1) prohibiting the uploading to the video-sharing platform of programmes, user-generated videos and audiovisual commercial communications which contain the following sections of the Criminal Code:

(a) a public provocation to commit a criminal offence made with a terrorist intent, as provided for in Chapter 34a, Section 1 (1)(2);

(b) distribution of a sexually offensive picture as provided for in Chapter 17, Section 18 (1)(1);

(c) aggravated distribution of a sexually offensive picture depicting a child as provided for in Chapter 17, Section 18a;

d) distribution of a description of violence as provided for in Chapter 17, Section 17;

e) ethnic agitation as provided for in Chapter 11, Section 10;

f) aggravated ethnic agitation as provided for in Chapter 11, Section 10a.

5.11.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that



are not marketed, sold or arranged by the VSP providers, section 226c (1)(2) of the ECS Act prescribes the obligations for VSPs in the following manner:

The video-sharing platform service shall have terms and conditions. The video-sharing platform provider shall include in the terms and conditions provisions:

2) according to which the requirements of Chapter 2, Section 2 of the Consumer Protection Act, Chapter 9 of the Tobacco Act, Chapter 7 of the Alcohol Act and Sections 91, 91a to 91c, 92a and 93a of the Medicines Act must be complied with in audiovisual commercial communications included in programmes and user-generated videos.

5.11.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, sections 226c (2)(3) and 226c (2)(4) of the ECS Act prescribe the obligations for VSPs in the following manner:

The video-sharing platform provider shall take the necessary measures to ensure that:

3) the video-sharing platform has a functionality that allows users to declare whether the videos contain audiovisual commercial communications; and

4) users of a video-sharing platform service are clearly informed when programmes or user-generated videos contain audiovisual commercial communications, provided that such communications are declared under paragraph 3 or that the video-sharing platform provider has knowledge of that fact.

5.11.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the VSP provider, the ECS Act, in section 226c (2)(1), provides that the VSP provider shall take the necessary measures to ensure that the VSP service has mechanisms in place for users to report or flag the content.



5.11.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the ECS Act, in section 226c (2)(2), provides the obligation for VSP providers to take the necessary measures to ensure that they have a system in place to explain to users what effect has been given to the reporting and flagging.

5.11.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, the AV Act refers to the obligations related to establishing a watershed.

According to section 6, subsection 3:

An audiovisual programme provider must ensure that an audiovisual programme with an age limit of 7, 12 or 16 is not available for viewing by children younger than the age limit. Measures for ensuring this include:

- 1) broadcasting the programme on television at a time of day when children normally do not watch television, provided that programme reception does not require the use of a descrambling device;*
- 2) making the programme available in such a way that a service that can be used to prevent the programme from being viewed is offered in connection with the programme;*
- 3) checking the viewer's age in another way when providing the programme.*

5.11.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, there are no relevant provisions in either of the acts.



5.11.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, there are no relevant provisions in either of the acts.

5.11.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, there are no relevant provisions in either of the acts.

5.11.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, the ECS Act, in section 226c (2)(4), provides for the obligation of VSPs to take the necessary measures to ensure that users of VSP services are clearly informed when programmes or user-generated videos contain audiovisual commercial communications (as stipulated under 1.1.3.4.). A reference to self-regulatory codes of conduct is included in section 8 of the AV Act in the following manner:

Providers of audiovisual programmes and video-sharing platforms can develop codes of conduct to protect children from harmful content and promote media literacy. The National Audiovisual Institute may check that the code of conduct complies with this law.

The national media education authority, the National Audiovisual Institute, coordinates and promotes media literacy, children's media skills and the development of a safe media environment for children in cooperation with other authorities and corporations in the sector. Media literacy is already implemented in the curricula of schools and upper secondary education, in the state administration, and through activities of various organisations and the public broadcasting company YLE.



5.11.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, the Data Protection Act, in section 5, provides protection mechanisms related to the processing of the personal data of the child, which is considered lawful where the child is at least 13 years old, but is based on the provision of consent.

5.11.3.13. Other relevant provisions related to the protection of minors

Sections 7a and 15 of the AV Act contain provisions relative to the protection of minors and content which may impair the physical, mental or moral development of minors. It does not offer any new definitions or provisions, but provides a new subsection, in which it is stipulated that the related obligations are also applicable to VSPs. However, the legislation provides the VSPs room for discretion with regard to the application of adequate measures. Depending on the situation, the means available could include, in accordance with the revised AVMSD, provisions to be included in the terms and conditions of service, existing content filtering systems and age verification systems.

Section 7a reads as follows:

Protecting children from harmful video programmes in video-sharing platform services.

The video-sharing platform provider shall take appropriate measures to protect children from audiovisual programmes that may be detrimental to the child's development. The measures shall be proportionate to the nature of the audiovisual programmes in question and the potential harm they may cause, taking into account the size of the video-sharing platform service and the nature of the service provided. The measures shall not lead to any ex-ante control measures or upload-filtering of content.

The ECS Act, in section 216 (2), includes provisions relative to the permitted interruption of children's programmes (once for each scheduled 30-minute period, if the scheduled duration of the programme is more than 30 minutes. Children's programme shall not be interrupted by teleshopping.)

5.11.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

N/A.



5.11.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

As the general regulation applies also to VSPs, no definitions or regulations have been introduced, apart from the existing obligations under the Alcohol Act. Further, in 2004 (revised 2015), the Consumer Ombudsman, the National Institute for Health and Welfare and the Finnish Food Safety Authority (now the Finnish Food Authority) issued a recommendation to advertisers on the marketing of food to children.¹⁹² Also, the practice of the Market Court (*Markkinaoikeus*) and Consumer Ombudsman is referred to there. There is also self-regulation by the food industry.

5.11.3.16. Other relevant information

Content inciting violence or hatred is criminalised in the Criminal Code as ethnic agitation, with provisions relating to aggravated ethnic agitation, as well as genocide or the preparation of genocide, a crime against humanity, an aggravated crime against humanity, a war crime, or serious violence that clearly endangers public order and safety, etc. Also punishable by criminal legislation is public incitement to commit an offence, distribution of depictions of violence, distribution of a sexually offensive picture, aggravated distribution of a sexually offensive picture depicting a child, offences committed with terrorist intent, etc.

While the Criminal Code provides for a number of provisions related to incitement to hatred as well as the protection of minors, etc., the general obligation to monitor user-generated content on websites is not stated. Whether a website administrator commits a crime depends on the description of a crime. Because crimes are mainly punishable only when they are committed with intent, this requires the website administrator to have had actual knowledge of the illegal content and of the fact that keeping it available is criminalised, unless otherwise provided in the Criminal Code. This is the case with ethnic agitation and distribution of a sexually offensive picture.

5.11.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be

¹⁹²<https://www.kkv.fi/ratkaisut-ja-julkaisut/julkaisut/kuluttaja-asiemiehen-linjaukset/toimialakohtaiset/lapset-ja-elintarvikkeiden-markkinointi/>.



practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

The ECS Act, section 226c (4), refers to the measures in the following manner:

The measures referred to in Subsection 2 shall be proportionate to the nature of the content in question and the harm that may result therefrom, taking into account the size and nature of the video-sharing platform service, the harm it may cause and the rights of video-sharing platform providers and the users having created or uploaded the content. The measures referred to in this Section shall not lead to any ex-ante control measures or upload-filtering of content.

5.11.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.11.5.1. Regulatory body

The Finnish Transport and Communications Agency (Traficom)¹⁹³ is responsible for the supervision of compliance with the Act on Electronic Communications Services, and of the provisions and decisions issued on the basis thereof. The Ministry of Transport and Communications is responsible for the overall guidance and development of the activities that fall within the scope of the ECS Act.¹⁹⁴ The Data Protection Ombudsman¹⁹⁵ supervises personal data protection. Also, the Consumer Ombudsman supervises compliance with regard to marketing targeted at children, the legality of contractual terms as well as marketing and procedures followed in customer relationships from the point of view of consumer protection. Finally, according to the AV Act, the National Audiovisual Institute¹⁹⁶ supervises compliance with the act, with no definitions or regulations introduced, due to

¹⁹³ <https://www.traficom.fi/en/>.

¹⁹⁴ <https://www.lvm.fi/en/home>.

¹⁹⁵ <https://tietosuojaja.fi/en/home>.

¹⁹⁶ <https://kavi.fi/en/national-audiovisual-institute/>.



the fact that the general regulation applies also to VSPs, as VSPs have not been defined or regulated in a particular way, as the provisions of the act apply to VSPs in addition to other providers of audiovisual media services.

5.11.5.2. Existence of a registration/notification system

Section 4 of the ECS Act contains provisions on notifications that shall be submitted to Traficom. According to section 4 (1)(5), before commencing operations, a service provider established in Finland shall submit an electronic notification to Traficom for the provision of a VSP service (video-sharing platform service notification).

An audiovisual programme provider must submit a notification to the National Audiovisual Institute when beginning to provide audiovisual programmes. The notification must be submitted if programmes are provided for economic purposes and on a regular basis (Act on Audiovisual Programmes, section 4).

5.11.5.3. Compliance, enforcement and sanctioning powers

No new definitions or regulations have been introduced, due to the fact that the general regulation applies also to VSPs. Traficom's competence in disputes between a user and a VSP would extend to assessing whether the VSP provider has taken the necessary legal measures to protect the public from illegal content and complied with audiovisual commercial communications requirements. Traficom's competence, on the other hand, would not include an assessment of the content presented on the platform (for further details, please refer to 5.11.5.5.).

5.11.5.4. Development of self- or co-regulatory codes or schemes

While there is no self- or co-regulation specifically in the field of VSPs, the ECS Act mentions, in section 303, subsection 6, the duty of Traficom to foster co-regulation or self-regulation, where due to the nature of a matter, co-regulation or self-regulation can safeguard the achievement of objectives laid down in the law. It also provides, in section 308, for cooperation among authorities. According to it, the Ministry of Transport and Communications, Traficom, the Data Protection Ombudsman, competition authorities, consumer authorities, market surveillance authorities and product safety authorities must cooperate in fulfilling their duties under this act. The AV Act mentions, in section 8 that providers of audiovisual programmes and VSPs can develop codes of conduct to protect children from harmful content and promote media literacy. The National Audiovisual Institute may check that the code of conduct complies with the law.



5.11.5.5. Out-of-court redress mechanisms for users

There are no dispute mechanisms yet. However, the government proposal for the ECS Act (page 257) states that Traficom would, within the framework of its general supervisory role, also act as an out-of-court cooperative body in disputes concerning the assessment of the legality of the measures taken by the VSP provider, between users and a VSP provider.

5.11.5.6. Rights before a court for users

Regular court proceedings apply.

5.11.6. Studies, reports and research

- Ministry of Transport and Communications: “Video-sharing platform services in Finland”, 2019.¹⁹⁷
- University of Eastern Finland, Faculty of Law: “A report on the consumer rights provided for in the Electronic Communications Services Act and the need for relevant provisions”, 2019.¹⁹⁸
- Finnish Government: “Project to reform the law on Electronic Communications Services”.¹⁹⁹

5.11.7. Data compilation

This factsheet is based on data compiled by Päivi Korpisaari, Professor in Communication Law at the Faculty of Law, University of Helsinki.

¹⁹⁷https://api.hankeikkuna.fi/asiakirjat/f4a8e63a-5c4f-4c82-a778-dbed38de6595/0efd2377-b58b-495c-ad7a-b8f850500939/RAPORTTI_20190408113856.pdf.

¹⁹⁸ https://api.hankeikkuna.fi/asiakirjat/f4a8e63a-5c4f-4c82-a778-dbed38de6595/910018a6-25d2-4509-9cbb-64612dcb67aa/RAPORTTI_20191028072931.pdf.

¹⁹⁹ <https://valtioneuvosto.fi/hanke?tunnus=LVM004:00/2019>.



5.12.FR – France – National legal summary²⁰⁰

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into an Ordinance (see primary legislation below) which replaces several articles of the 1986 Audiovisual Law (the Ordinance).

5.12.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft Ordinance replacing several articles of the 1986 Audiovisual Law (*Ordonnance n° 2020-1642 du 21 décembre 2020 portant transposition de la directive (UE) 2018/1808 du Parlement européen et du Conseil du 14 novembre 2018 modifiant la directive 2010/13/UE visant à la coordination de certaines dispositions législatives, réglementaires et administratives des États membres relatives à la fourniture de services de médias audiovisuels, compte tenu de l'évolution des réalités du marché, et modifiant la loi du 30 septembre 1986 relative à la liberté de communication, le code du cinéma et de l'image animée, ainsi que les délais relatifs à l'exploitation des œuvres cinématographiques*).²⁰¹
- Decree related to commercial communications for the application of Articles 27 and 33 of the 1986 Audiovisual Law and fixing the general principles defining the obligations of the publishers of services as regards advertising, of sponsorship and tele-shopping (*Décret n°92-280 du 27 mars 1992 pris pour l'application des articles 27 et 33 de la loi n° 86-1067 du 30 septembre 1986 et fixant les principes généraux définissant les obligations des éditeurs de services en matière de publicité, de parrainage et de télé-achat*).²⁰²
- Law of 19 October 2020 aimed at regulating the commercial exploitation of the image of children under the age of 16 on online platforms, amending the 1986 Audiovisual Law (*Loi n°2020-1266 du 19 octobre 2020 visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne*).²⁰³

²⁰⁰ The factsheet on France incorporates the feedback received from Raphaël Honoré and Lucile Petit, Conseil supérieur de l'audiovisuel (CSA), during the checking round with the national regulatory authorities.

²⁰¹ <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/2021-01-11/>.

²⁰² <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000346165/2020-10-03/>

²⁰³ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042439054>.



5.12.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSP stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 32. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	No.
User-generated video	No.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: French response to European Audiovisual Observatory standardised survey

5.12.2.1. VSP service

Article 1 of the Ordinance (replacing Article 2 of the Audiovisual Law, provides for the definition of a VSP service fully in line with the wording of the revised AVMSD, as:

- 1- *A service provided by an electronic communications network;*
- 2- *the provision of programmes, user-generated videos or both, in order to inform, entertain or educate is the main purpose of the service or of a dissociable section of the service or essential functionality of the service;*
- 3- *the service provider does not have editorial responsibility for the contents but the organisation is determined by the video-sharing platform provider;*
- 4- *a service classed as an economic activity.*

5.12.2.2. VSP provider

The Ordinance does not include the definition of a VSP provider.

5.12.2.3. User-generated video

The Ordinance does not provide for the definition of user-generated content. Article 2 of the 1986 Audiovisual Law mentioned “user-generated content”, but provided no definition.



5.12.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.12.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.12.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites to violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.12.3.1. General provisions

Article 22 of the Ordinance (replacing Article 60 of the Audiovisual Law) specifies that programmes, user-generated videos and audiovisual commercial communications available on VSPs will have to respect the provisions of Article 15 of the Audiovisual Law relative to content inciting to violence or hatred, which is related to “race, sex, customs, religion or nationality”. This is to be extended in the Ordinance so that it corresponds to Article 21 of the Charter of Fundamental Rights²⁰⁴ and provides for more extensive criteria relative to the prohibition of discrimination. Also, it is proposed that this extension will include content the dissemination of which constitutes an activity which is a criminal offence under EU law, in the same way that current legislation requires the media regulator to ensure that

²⁰⁴https://fra.europa.eu/en/eu-charter/article/21-non-discrimination?utm_content=buffer87a6d&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.



children, teenagers and the dignity of the human person are protected. Article 5 of the Ordinance (amending Article 50. 11 of the Audiovisual Law), envisages amending the provisions by providing that the French regulator, the *Conseil Supérieur de l'Audiovisuel* (CSA), must make sure that content does not include public provocation to commit a terrorist offence under the Penal Code.

Child pornography, racism and xenophobia are already forbidden by the Audiovisual Law which forbids content prejudicing the dignity of the human person. Article 5 of the Ordinance also specifies that user-generated videos and audiovisual commercial communications (for commercial communication see Article 22 of the Ordinance) available on VSPs must protect gender identity.

5.12.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, no specific provision of the Ordinance deals with this issue.

5.12.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 22 of the Ordinance (replacing Article 60 of the Audiovisual Law) specifies that the CSA will have to ensure that commercial communication respects minors and human dignity and that it does not incite violence or hatred. This same Article 22 also makes reference to a relevant 1986 decree on commercial communications and stipulates respect for gender identity.

5.12.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 22 of the Ordinance (replacing Article 60 of the Audiovisual Law) stipulates that the CSA will have to ensure that the VSP clearly informs users that videos contain audiovisual commercial communications.



5.12.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag content to the VSP provider, Article 22 of the Ordinance (replacing Article 60, II, 2° and 4° of the Audiovisual Law) specifies that the CSA will have to specify measures for reporting and flagging content, as well as a process for resolving complaints.

5.12.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 22 of the Ordinance (replacing Article 60, II of the Audiovisual Law) stipulates that details will have to be specified by the CSA.

5.12.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 22 of the Ordinance (modifying Article 60, II, 3° of the Audiovisual Law) specifies that this point must be specified by the CSA.

5.12.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 22 of the Ordinance (modifying Article 60, II, 2° & 3° of the Audiovisual Law) specifies that the CSA will have to specify measures for the classification of content, age verification and parental control systems.



5.12.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 22 of the Ordinance (modifying Article 60, II, 3° of the Audiovisual Law) establishes that this point will have to be specified by the CSA.

5.12.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 22 of the Ordinance (modifying Article 60, II, 4° of the Audiovisual Law) specifies that the CSA will have to specify the process of resolving complaints.

5.12.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 22 of the Ordinance in (modifying Article 60, II, 5° of the Audiovisual Law) provides for this point to be specified by the CSA.

5.12.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 22 of the Ordinance (modifying Article 60, III of the Audiovisual Law) stipulates that the personal data of minors collected or otherwise generated by VSP providers shall not be processed, even after the age of majority, for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.



5.12.3.13. Other relevant provisions related to the protection of minors

Article 22 of the Ordinance (modifying Article 61 of the Audiovisual Law) states that the CSA will have to foster the development of codes of good administrative behaviour by the VSPs.

5.12.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

The general rules, as set out in the aforementioned decree on commercial communications, stipulate that commercial communications must not bring any physical, mental or moral prejudice to minors, etc. and the Ordinance specifies that VSP providers will also have to respect the same rule.

5.12.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

Article 3 of the Ordinance (modifying Article 14 of the Audiovisual Law) specifies that the CSA will have to promote codes of best practice regarding foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, excessive intake of which in the overall diet is not recommended.

Health-related legislation forbids commercial communication for alcohol, including the prohibition of commercial communications online, on sites mainly aimed at young people.

5.12.3.16. Other relevant information

N/A.

5.12.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.



This section aims at identifying how this is implemented in the national legislation.

While Article 1 of the Ordinance (modifying Article 2 of the Audiovisual Law) defines a VSP using the definition from the revised AVMSD, it does not offer any further criteria. These matters will probably be detailed in the sub-legislative acts that will follow the adoption of the legislation.

5.12.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.12.5.1. Regulatory body

The competent regulatory body is the *Conseil Supérieur de l'Audiovisuel* (CSA).²⁰⁵ The new draft Law relating to the regulation and protection of access to cultural works in the digital age foresees that the CSA will merge with HADOPI (High Authority for the dissemination of works and the protection of rights on the internet) into a new national regulatory authority called ARCOM.²⁰⁶

5.12.5.2. Existence of a registration/notification system

The CSA will keep and update a list of VSPs that fall within the competence of France. This list will specify the criteria used to add each VSP to the list.

5.12.5.3. Compliance, enforcement and sanctioning powers

As the CSA has a central role in the regulation of VSPs, provided for in Article 22 (modifying Article 60, I, 60, II of the Audiovisual Law) and Article 6 (modifying Article 17-1 of the Audiovisual Law) of the Ordinance, it will have to ensure that VSPs implement all the

²⁰⁵ <https://www.csa.fr/>.

²⁰⁶ At the time of writing this report, the legislation was under consideration by Parliament: <https://www.senat.fr/dossier-legislatif/pjl20-523.html>.



measures envisaged in the draft. The CSA will have to issue annual reports on the implementation of the new law for VSPs and the number of codes of conduct adopted by VSPs. Article 6 of the Ordinance (modifying Article 17-1 of the Audiovisual Law) further specifies that the CSA must inform the data protection authority CNIL (*Commission nationale de l'informatique et des libertés*) when it receives a request from a VSP user about personal data, and can request advice from this institution.

As for sanctioning powers, the Ordinance provides no details as yet, as a Government decree or a CSA decree for the implementation of such powers is awaited.

5.12.5.4. Development of self- or co-regulatory codes or schemes

The CSA will have to encourage the elaboration of codes of good administrative behaviour by VSPs. For now, the Ordinance envisages three codes of conduct related to VSPs:

- Article 22 of the Ordinance (modifying Article 61 of the Audiovisual Law) – the CSA will foster the development of codes of conduct by VSPs, which must relate to all relevant obligations.
- Article 3 of the Ordinance (modifying Article 14 of the Audiovisual Law) – the CSA will foster the development of codes of conduct about 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 intake in the overall diet is not recommended.
- Also, the parliamentary amendments procedure included a new provision according to which the CSA is to foster the development of charters by VSPs in order to intensify the fight against the illegal commercial exploitation of the image of children under the age of 16 years. The law of 19 October 2020 aimed at regulating the commercial exploitation of the image of children under the age of 16 on online platforms, amending the 1986 Audiovisual Law, stipulates:

Article 15-1.

The CSA promotes the adoption by video-sharing platform services of the charters provided for in article 4 of law n° 2020-1266 of 19 October 19 2020 aimed at regulating the commercial exploitation of the image of children under the age of sixteen on online platforms. It publishes a periodic review of the application and effectiveness of these charters. To this end, it collects from these services, under the conditions set out in article 19 of this law, all the information necessary for the preparation of this review.



5.12.5.5. Out-of-court redress mechanisms for users

The CSA will be included in disputes between users and VSP providers relating to the obligations of VSPs. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law. The CSA will specify the process for resolving complaints.

5.12.5.6. Rights before a court for users

No specific provision of the Ordinance deals with this issue, but nothing prevents users from asserting their rights before a court.

5.12.6. Studies, reports and research

N/A.

5.12.7. Data compilation

This factsheet is based on data compiled by Marc Le Roy, PhD in Law.



5.13.GB – United Kingdom – National legal summary²⁰⁷

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) were transposed into Part 4B of the UK's 2003 Communications Act through the Audiovisual Media Services Regulations that came into force on 1 November 2020. An Online Safety Bill was proposed by the UK Government in May 2021 that, if enacted, would also apply to VSPs.²⁰⁸

5.13.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Communications Act of 2003 (as amended).²⁰⁹

Secondary legislation and guidance:

- Audiovisual Media Services Regulations as amended to reflect the UK's exit from the European Union on 31 December 2020 by a follow-up statutory instrument.²¹⁰
- Guidance on notification of VSPs by Ofcom "Video-sharing platforms: Who needs to notify?" from March 2021.²¹¹

²⁰⁷ The factsheet on the United Kingdom incorporates feedback received from Ofcom's International and Online Safety Policy teams during the checking round with the national regulatory authorities

²⁰⁸ The draft as proposed on 12 May 2021 along with an explanatory note can be found at <https://www.gov.uk/government/publications/draft-online-safety-bill>. This draft bill would impose a "duty of care" on all providers to protect users from certain harms, including those covered in the AVMSD's Article 28b(1). Services determined to fall within a higher category of risk based on reach and functionality would have a duty of care that extends to harms from other illegal and legal content and activity. Ofcom's enforcement powers would be extended by the bill. The bill will go through legislative procedure, during which significant changes may be introduced, and the government's timetable approximated two years following adoption for a new regulatory framework to be introduced, so the framework described below is expected to remain in place for some time.

²⁰⁹ <https://www.legislation.gov.uk/ukpga/2003/21/contents>.

²¹⁰ The original regulations set out in Statutory Instrument No. 1062 of September 2020 <https://www.legislation.gov.uk/uksi/2020/1062/made> and amended by Statutory Instrument no. 1536 of December 2020 <https://www.legislation.gov.uk/uksi/2020/1536/introduction/made>. A further amendment is currently passing through the UK Parliament and can be found at: <https://www.legislation.gov.uk/ukdsi/2021/9780348220582>.

²¹¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/215456/guidance-video-sharing-platforms-who-needs-to-notify.pdf.



5.13.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 33. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	No.
“Principal purpose”	Yes.
“Dissociable section”	Yes.
“Essential functionality”	Yes.

Source: UK’s response to European Audiovisual Observatory standardised survey

5.13.2.1. VSP service

Part 4B of the 2003 Communications Act provides for the definition of a VSP service fully in line with the wording of the revised AVMSD, as follows:

368S Meaning of “video-sharing platform service”

(1) In this Part “video-sharing platform service” means a service or dissociable section of a service which meets the conditions in subsection (2), where the provision of videos to members of the public is—

- (a) the principal purpose of the service or of the dissociable section of the service, or*
- (b) an essential functionality of the service.*

(2) The conditions in relation to the service or dissociable section of the service are—

- (a) it is provided by means of an electronic communications network;*
- (b) it is provided on a commercial basis;*
- (c) the person providing it—*
 - (i) does not have general control over what videos are available on it, but*
 - (ii) does have general control over the manner in which videos are organised on it (and in this sub-paragraph “organised” includes being organised automatically or by way of algorithms, in particular by displaying, tagging and sequencing); and*
- (d) the person providing it has the required connection with the United Kingdom.*



This “required connection” is then defined as being in either of two cases: one based on a fixed establishment in the UK and a connection based on a group undertaking in the UK that is not already under the jurisdiction of an EEA state for the purposes of the AVMSD.

5.13.2.2. VSP provider

The 2003 Communications Act does not include the definition of a VSP provider, per se. However, section 368S(2)(c) defines providers as follows:

c) the person providing it–

(i) does not have general control over what videos are available on it, but

(ii) does have general control over the manner in which videos are organised on it (and in this sub-paragraph “organised” includes being organised automatically or by way of algorithms, in particular by displaying, tagging and sequencing); ...

5.13.2.3. User-generated video

The Communications Act and Ofcom guidance use the term “video”, which can include programmes and user-generated videos.

5.13.2.4. “Principal purpose” or “dissociable section” of a VSP service

The Ofcom guidance on notification interprets these concepts as: “the ‘principal purpose’ (i.e. the main activity or objective) of the platform as a whole or of a ‘dissociable section’ of it (i.e. a part of the platform that is sufficiently distinct from the rest of it);”

5.13.2.5. “Essential functionality” of a VSP service

The Ofcom guidance on notification interprets this concept as: “an ‘essential functionality’ of the service as a whole (i.e. where the provision of videos contributes significantly to the commercial and functional value of their service)”.

5.13.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of



the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.13.3.1. General provisions

The legal obligations for audiovisual media services including on demand programme services to protect the public from incitement to violence and hatred and from terrorist or child sexual exploitation content is derived from the Communications Act.

The system developed for Video on Demand (VoD) serves as the model for the UK's approach to VSPs. VSPs are required to notify Ofcom of their intention to provide the service (or current provision of the service for those already operating), and Ofcom can recognise an appropriate regulatory authority established by the VSPs or act as regulator if no such self-regulator is established. Part of this system will be the creation of guidance for VSPs in line with the Communications Act 2003.

The same legislative framework applies in relation to the protection of minors, referring directly to the provisions stemming from the old text of the AVMSD, such as references to materials that might seriously impair the physical, mental or moral development of people under 18, watershed rules for content that may be harmful to children, pornographic materials, etc. The language of the AVMSD on harm to the physical, mental or moral development of minors, both for programmes and advertising, is now replicated in the Communications Act as amended by the AVMS Regulations.

The same approach applies to commercial communications, with an emphasis on the existing self-regulatory mechanisms, as provided for further in the text.

As of May 2021, Ofcom was still consulting on guidance for VSPs on measures to protect users from harmful material. In this draft guidance, it explains that VSPs are required to protect the general public from “relevant harmful material”, which includes incitement to violence or hatred against particular groups and content that would be considered a criminal offence under laws relating to terrorism; child sexual abuse material; and racism and xenophobia. VSPs are also required to protect minors (persons under 18) from “restricted material”, which includes content that has been given, or would likely be given, an R18 certificate, material unsuitable for classification (such as sadistic violence or torture), and other material which might impair their physical, mental or moral development. The draft guidance also lists the provision of impartial dispute resolution procedures as obligatory. Ofcom has set out a flexible and dynamic approach to VSPs' measures, while requiring that they be effective in meeting the purposes of protection set out in the Communications Act. The draft guidance insists VSPs consider all the measures



set out as appropriate in Schedule 15A and suggests they undertake risk assessments and collect data with which to track effectiveness. In the draft guidance, Ofcom has detailed several measures that it deems to be core, but does not require they be utilised.

5.13.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, Schedule 15A of the Communications Act sets out the measures that would be appropriate for VSPs to take in order to protect users as required in section 368Z(1) of the Act. This includes setting terms and conditions to the effect that if a person uploads a video that contains any specially restricted material to the service, that person must bring it to the attention of the person who is providing the service. It also suggests that the terms and conditions refer to the prohibition for a person to upload a video containing relevant harmful material to the service.

5.13.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the inclusion in VSP terms and conditions of the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, the Communications Act, Schedule 15A(4) states that:

- (a) a person must not upload to the service a video containing an audiovisual commercial communication for a product mentioned in section 368Z(2),*
- (b) a person must not upload to the service a video containing an audiovisual commercial communication for an alcoholic drink unless that communication meets the requirements in section 368Z(3), (4) and (5), and*
- (c) a person must not upload to the service a video containing an audiovisual commercial communication for anything else unless that communication meets the requirements in section 368Z(4) and (5).*

5.13.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Schedule 15A(5) of the Communications Act sets out as appropriate that VSPs:



5. Provide functionality for a person uploading a video to the service to declare whether, as far as they know or can reasonably be expected to know, the video contains an audiovisual commercial communication, and include terms and conditions to the effect that a person uploading a video must use the functionality to make such a declaration.

5.13.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the VSP provider, the Communications Act, in Schedule 15A(6), sets out as appropriate that VSPs establish and operate: “(a) transparent and user-friendly mechanisms for viewers to report or flag harmful material which is available on the service to the person providing the service”.

5.13.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the explanation to users of the effects of any reporting or flagging of the content to the VSP provider, the Communications Act, in Schedule 15A(6), sets out as appropriate that VSPs establish and operate: “(b) systems through which the person providing the service explains to persons using the service what effect has been given to the reporting and flagging referred to in sub-paragraph (a)”.

5.13.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, the Communications Act, in Schedule 15A(6)(c), sets out as appropriate for VSPs to establish systems for obtaining assurance as to the age of potential viewers.

5.13.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Schedule 15A(6)(d) of the Communications Act sets out as appropriate the establishment of easy-to-use systems allowing viewers to rate harmful material on VSPs.



5.13.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, the Communications Act, in Schedule 15A(7) indicates that the provision of parental control systems in relation to specially restricted material is an appropriate measure to be taken by a VSP.

5.13.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Schedule 15A(8) of the Communications Act replicates the text of the revised AVMSD setting out that it is appropriate that VSPs:

8. Establish and operate a transparent, easy-to-use and effective complaints procedure in relation to the implementation of the measures referred to in paragraphs 6 and 7 which must be without prejudice to any right to seek redress from a court that a person may have.

5.13.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Schedule 15A(9) of the Communications Act emphasises media literacy mechanisms by setting out as appropriate that VSPs: “9. Provide information and tools for individuals using the service with the aim of improving their media literacy, and raise awareness of the availability of such information and tools”.

5.13.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

The processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, is covered by the Data Protection Act 2018, the Age Appropriate Design Code and other guidance from the Information Commissioner's Office.



5.13.3.13. Other relevant provisions related to protection of minors

N/A.

5.13.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

While there are no specific definitions for commercial communication in relation to what may be detrimental to the physical, mental or moral development of minors, relevant rules refer to the prohibition of e.g., product placement in children's programming (persons under 16). The UK Code of Broadcast Advertising (BCAP Code) overseen by the Advertising Standards Authority includes a section on rules related to advertising and children and includes a number of relevant rules. The parallel UK Code of Non-Broadcast Advertising Code (CAP Code) also contains rules related to children and its rules would apply to online advertising. Ofcom will be consulting on draft guidance on all the VSP advertising regulations in the coming months, as well as Ofcom's co-regulatory relationship with the Advertising Standard Authority (ASA).

5.13.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The Communications Act contains rules for both commercial communications marketed by VSPs and commercial communications not marketed by VSPs, however the rules for the latter require VSPs to use measures to ensure such commercial communication also complies with the rules for the former in relation to alcohol. In section 368X of the Communications Act, Ofcom is required to encourage VSPs to develop codes of conduct on the promotion of food or beverages in commercial communications in or around videos that are likely to appeal to children. Further, section 368Z on Advertising controlled by service providers reads:

(2) Audiovisual commercial communications for the following products are prohibited in a video-sharing platform service—

- (a) cigarettes or other tobacco products;*
- (b) electronic cigarettes or electronic cigarette refill containers;*
- (c) any prescription-only medicine.*

(3) Audiovisual commercial communications for alcoholic drinks are only permitted in a video-sharing platform service if—

- (a) they are not aimed specifically at persons under the age of 18; and*
- (b) they do not encourage immoderate consumption of alcohol.*

It also states that commercial communications on a VSP may not:



- (e) *cause physical, mental or moral detriment to persons under the age of 18;*
- (f) *directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;*
- (g) *directly encourage such persons to persuade their parents or others to purchase or rent goods or services;*
- (h) *exploit the trust of such persons in parents, teachers or others; or*
- (i) *unreasonably show such persons in dangerous situations.*

Section 368Z1 on harmful material, and advertising, etc. not controlled by service providers, requires VSPs to take measures appropriate for the purposes of:

- (a) *protecting persons under the age of 18 from videos and audiovisual commercial communications containing specially restricted material;*
- (b) *protecting the general public from videos and audiovisual commercial communications containing relevant harmful material; and*
- (c) *in relation to audiovisual commercial communications that are not marketed, sold or arranged by the person providing the service, ensuring that—*
 - (i) *audiovisual commercial communications for a product mentioned in section 368Z(2) are not included in the service,*
 - (ii) *audiovisual commercial communications for alcoholic drinks are only included in the service if they meet the requirements in section 368Z(3), (4) and (5), and*
 - (iii) *audiovisual commercial communications for anything else are only included in the service if they meet the requirements in section 368Z(4) and (5).*

5.13.3.16. Other relevant information

The measures listed in Schedule 15A of the Communications Act are set out there as ones that are appropriate for VSPs to take but they are not mandatory. It is required in section 368Z1(2) that any measures that are taken are implemented so as to carry out the purposes set out in the Act, to protect users, especially minors from harmful material:

- (2) *Where a provider of a video-sharing platform service takes a measure set out in Schedule 15A, the provider must implement the measure in such a way as to carry out the purpose or purposes mentioned in subsection (1) for which the measure is appropriate.*

On 12 May 2021, the UK Government published a draft Online Safety Bill,²¹² which covers digital services including VSPs, and, as mentioned above, may eventually supersede the Communications Act in some areas related to VSPs.

²¹² The draft text can be found here <https://www.gov.uk/government/publications/draft-online-safety-bill>.



5.13.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

While the Communications Act sets out the elements to be considered when applying the rules relative to the measures taken by VSPs, Section 368Z1 states:

(4) Whether a measure is appropriate for any of the purposes mentioned in subsection (1) must be determined by whether it is practicable and proportionate for the measure to be taken, taking into account:

- (a) the size and nature of the video-sharing platform service;*
- (b) the nature of the material in question;*
- (c) the harm the material in question may cause;*
- (d) the characteristics of the category of persons to be protected;*
- (e) in relation to audiovisual commercial communications that are not marketed, sold or arranged by a person providing a video-sharing platform service, the fact that the provider exercises limited control over such communications;*
- (f) the rights and legitimate interests at stake, including those of the person providing the video-sharing platform service and the persons having created or uploaded the material, as well as the general public interest;*
- (g) any other measures which have been taken, or are to be taken.*

Ofcom published draft guidance on measures to protect users from harmful material on 30 March 2021 with a deadline for consultation input of 2 June 2021. This draft guidance details criteria that should be considered by VSPs to determine appropriate measures that are practicable and proportionate. These relate to the reach and resources of the service, the nature of the service (functionalities and business model), the nature of the content, the category of users to be protected, and the rights and interests of users.²¹³

²¹³ The draft guidance can be found at https://www.ofcom.org.uk/_data/assets/pdf_file/0028/216487/vsp-harms-draft-guidance.pdf.



5.13.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.13.5.1. Regulatory body

The competent regulatory body is the Office of Communications (Ofcom).²¹⁴

5.13.5.2. Existence of a registration/notification system

Ofcom will operate a notification system for VSPs similar to the one in existence for VoDs. VSPs will notify Ofcom and Ofcom will maintain a database of them, charge them fees to cover the costs of this, and be able to penalise them through notices or fines. Ofcom has published guidance on the notification rules and procedures.²¹⁵ VSPs that were already in operation were required to notify by 6 May and any anyone wishing to launch a new service must notify at least 10 working days in advance. On this matter, the Communications Act states:

368V Advance notification to appropriate regulatory authority

(1) A person must not provide a video-sharing platform service unless, before beginning to provide it, that person has given a notification to the appropriate regulatory authority of the person's intention to provide that service.

(2) A person who has given a notification for the purposes of subsection (1) must, before:

- (a) providing the notified service with any significant differences; or*
- (b) ceasing to provide it,*

give a notification to the appropriate regulatory authority of the differences or (as the case may be) of the intention to cease to provide the service.

(3) A notification for the purposes of this section must:

²¹⁴ <https://www.ofcom.org.uk/home>.

²¹⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/215456/guidance-video-sharing-platforms-who-needs-to-notify.pdf.



- (a) *be sent to the appropriate regulatory authority in such manner as the authority may require; and*
- (b) *contain all such information as the authority may require.*

(4) In this section, “significant differences” includes any change that may affect the determination of jurisdiction in accordance with paragraphs 1 to 4 of Article 28a of the Audiovisual Media Services Directive.

The Communications Act gives Ofcom powers to gather information from VSPs and to monitor the measures they implement in order to comply with the requirements. In section 368Z10 of the AVMS Regulations “information” includes “technical information and content such as videos, audiovisual commercial communications, screenshots and archived material” which therefore covers a broad array of VSP-held information. The regulator will be able to require more information as long as the demands are proportionate and the VSP has been given the chance to make a representation to the regulator.

5.13.5.3. Compliance, enforcement and sanctioning powers

The AVMS Regulations designated Ofcom to serve as the regulatory authority and expand its powers to include VSPs. Ofcom also has the authority to recognise a self-regulatory authority should one be established by the industry. Ofcom receives the following additional powers: to designate a regulatory authority for VSPs; to serve as the regulatory authority if none is formed; to require notification by VSPs and charge them a fee; to monitor and require information from VSPs; to facilitate the development of VSP codes of conduct on food and beverages in commercial communications in and around videos likely to appeal to children; to enforce the notification requirement for VSPs and their duties to implement measures to protect consumers from harmful content including advertising through enforcement notifications and financial penalties.

The Communications Act sets out the role of Ofcom in relation to VSPs as follows:

368T The appropriate regulatory authority

(1) OFCOM may designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of this Part, subject to subsection (9).

(2) To the extent that no body is designated for a purpose, OFCOM is the appropriate regulatory authority for that purpose.

(3) Where a body is designated for a purpose, OFCOM may act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.

(4) OFCOM may provide a designated body with assistance in connection with any of the functions of the body under this Part.



- (5) A designation may in particular:
- (a) provide for a body to be the appropriate regulatory authority in relation to video-sharing platform services of a specified description;
 - (b) provide that a function of the appropriate regulatory authority is exercisable by the designated body:
 - (i) to such extent as may be specified;
 - (ii) either generally or in such circumstances as may be specified; and
 - (iii) either unconditionally or subject to such conditions as may be specified.
- (6) The conditions that may be specified pursuant to subsection (5)(b)(iii) include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of OFCOM.
- (7) A designation has effect for such period as may be specified and may be revoked by OFCOM at any time.
- (8) OFCOM must publish any designation in such manner as they consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.
- (9) OFCOM may not designate a body unless, as respects that designation, they are satisfied that the body:
- (a) is a fit and proper body to be designated;
 - (b) has consented to being designated;
 - (c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
 - (e) is sufficiently independent of providers of video-sharing platform services; and
 - (f) will, in performing any function to which the designation relates, have regard in all cases:
 - (i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - (ii) to such of the matters mentioned in section 3(4) as appear to the body to be relevant in the circumstances.

The Communications Act also sets out specific duties of the appropriate regulatory authority in section 368X. Here the Act refers to the duty to take steps to ensure that VSPs comply with the administrative requirements set out in section 368Y and with the obligations to ensure uploaders can declare commercial communications and to provide impartial out-of-court dispute resolution as set out in section 368Z1. The duties listed in section 368X also include encouraging VSPs to develop codes of conduct on the appropriate promotion of food and beverages in commercial communications in and around videos that are attractive to children and drawing up guidance on the appropriate measures for protecting users. The regulatory authority has the power to issue an enforcement notification and/or to impose a financial penalty for contraventions.



Section 368Z2 states that the regulator:

- (7)... may do one or both of the following—*
- (a) give the provider an enforcement notification under this section;*
 - (b) impose a financial penalty on the provider in accordance with section 368Z4.*
- (2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of section 368Y or 368Z1(6) or (7) is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.*
- (3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes requirements on the provider to take such steps for complying with section 368Y or 368Z1(6) or (7) and for remedying the consequences of the contravention of either of those sections as may be specified in the notification.*
- (4) The requirements specified in an enforcement notification may in particular include requirements to do one or more of the following—*
- (a) cease providing or restrict access to—*
 - (i) a specified video, or*
 - (ii) videos of a specified description;*
 - (b) cease showing or restrict access to—*
 - (i) a specified audiovisual commercial communication, or*
 - (ii) audiovisual commercial communications of a specified description;*
 - (c) provide additional information to users of the service about the content of a specified video or videos of a specified description prior to the selection of that video or a video of that description by an individual for viewing;*
 - (d) provide an out-of-court procedure of a specified description for resolving disputes between the provider and a person using the service;*
 - (e) show an audiovisual commercial communication marketed, sold or arranged by the provider on the service only with specified modifications; or*
 - (f) publish a statement of the findings of the appropriate regulatory authority in the form and place and for the time period specified.*
- (5) An enforcement notification must—*
- (a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and*
 - (b) fix a reasonable period for taking the steps required by the notification.*



5.13.5.4. Development of self- or co-regulatory codes or schemes

Besides the aforementioned, the Communications Act foresees codes of conduct to be developed on the advertising of foods and beverages in and around videos likely to attract children. Section 368X on the duties of the regulator states:

(2) The appropriate regulatory authority must encourage providers of video-sharing platform services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages in audiovisual commercial communications which are included in, or accompany, videos containing content which is likely to appeal to children.

The Advertising Standards Authority has been operating as a self-regulatory body for the advertising industry for half a decade. It initially covered only non-broadcast advertising as a purely self-regulatory mechanism. Since 2004 the ASA has had a co-regulatory agreement with Ofcom for broadcast advertising and a similar arrangement was agreed in 2009 for VoD services. Since 2010 the ASA also covers online advertising.

Ofcom serves as the backstop to the self-regulatory body for broadcast advertising and VoD advertising. It is responsible for regulating advertising on VSPs and has stated its intention to work with the ASA on this.²¹⁶ It also has statutory duties to consult with the industry and to maintain content and consumer panels. It also has a statutory duty to provide information and advice to the Secretary of State as well as other obligations in that relationship.

5.13.5.5. Out-of-court redress mechanisms for users

As mentioned earlier, the Communications Act in section 368Z1 reads:

(7) A person who provides a video-sharing platform service must provide for an impartial out-of-court procedure for the resolution of any dispute between a person using the service and the provider relating to:

- *the implementation of any measure set out in Schedule 15A, or*
- *a decision to take, or not to take, any such measure,*

but this must be without prejudice to any right to seek redress from a court that such persons may have.

²¹⁶ See paragraph 2.32 https://www.ofcom.org.uk/_data/assets/pdf_file/0028/216487/vsp-harms-draft-guidance.pdf.



In its draft guidance for VSPs on measures to protect users, Ofcom has identified the provision of impartial out-of-court dispute resolution procedures as a requirement and provided detailed guidance on how such procedures should operate.²¹⁷

5.13.5.6. Rights before a court for users

Regardless of the existence and use of any out-of-court redress mechanisms offered by VSPs, nothing prevents users from asserting their rights before a court.

5.13.6. Studies, reports and research

- Plum Consulting on behalf of the UK Dept of Culture, Media & Sport, *Understanding VSPs under UK Jurisdiction*, 2020.²¹⁸
- The Alan Turing Institute on behalf of Ofcom, *Understanding online hate: VSP Regulation and the broader context*, 2021.²¹⁹
- The Institute for Connected Communities, University of East London on behalf of Ofcom, *Research on the Protection of Minors*, 2021.²²⁰
- Yonder on behalf of Ofcom, *User Experience of Potential Online Harms within Video-Sharing Platforms*, 2021.²²¹

5.13.7. Data compilation

This factsheet is based on data compiled by Sally Broughton Micova, Lecturer in Communications Policy and Politics, University of East Anglia.

²¹⁷ See paragraphs 4.128-4.146 https://www.ofcom.org.uk/_data/assets/pdf_file/0028/216487/vsp-harms-draft-guidance.pdf.

²¹⁸ <https://www.gov.uk/government/publications/report-on-video-sharing-platforms>.

²¹⁹ https://www.ofcom.org.uk/_data/assets/pdf_file/0022/216490/alan-turing-institute-report-understanding-online-hate.pdf.

²²⁰ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/216491/uel-report-protection-of-minors.pdf.

²²¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/216492/yonder-report-experience-of-potential-harms-vsps.pdf.



5.14. GR – Greece – National legal summary²²²

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into Law 4779/2021 (the 2021Law).

5.14.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Law 4779/2021 (Official Gazette A 27).²²³

5.14.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 34. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Greek response to European Audiovisual Observatory standardised survey

²²² The factsheet on Greece incorporates the feedback received from Persa Lambropoulou, Legal Advisor at the National Council for Radio and Television, during the checking round with the national regulatory authorities.

²²³ <https://www.kodiko.gr/nomothesia/document/672722/nomos-4779-2021>.



5.14.2.1. VSP service

Article 1, paragraph 1(aa) of the 2021 Law provides for the definition of a VSP by extending the definition stemming from the revised AVMSD in order to determine the scope of applicability to social networks:

Video-sharing platform service: A service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of which or of a dissociable section thereof or an essential functionality of the above 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(9) of Article 110 of Law 4727/2020 on electronic communications) 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. Social media services are also included in this definition to the extent that they provide programmes and/or user-generated videos aiming to inform, entertain or educate, for which the provider does not have editorial responsibility, under the condition that the provision of such programmes or user-generated videos constitutes an essential functionality of these social media services.

5.14.2.2. VSP provider

Article 1, paragraph 1(da) of the 2021 Law defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “Video-sharing platform provider: the natural or legal person who provides a video-sharing platform service as defined in Article 1, par. 1(aa).”

5.14.2.3. User-generated video

Article 1, paragraph 1(ba) of the 2021 Law provides for the definition of “user-generated content” by transposing the text of the revised AVMSD verbatim, as follows:

User-generated video: a set of consecutive 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.

5.14.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.14.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.14.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.14.3.1. General provisions

Provisions relative to terrorism, child pornography, racism and xenophobia are part of the Penal Code,²²⁴ inclusive of prohibitions relative to the proliferation of these materials via any type of media.

The national audiovisual legislation currently in force does not contain a definition for content which may impair the physical, mental or moral development of minors. It establishes a set of rules for the protection of minors from harmful content with reference to some indicative categories of such content, such as the prohibition of any dramatisation or dramatic re-enactment of events, as well as the prohibition of any broadcasting of programmes which might seriously harm the physical, mental or moral development of minors.

²²⁴ In particular, Directive 2011/93/EE of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, has been transposed into Greek law in Articles 348A-348D of the Greek Penal Code (GPC); Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism has been transposed into Greek law in Article 187A of the GPC; and Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law has been transposed into Law 927/1979 (as amended) and Articles 184 par. 1-3 and 82A of the GPC.



Similarly, Article 9, of the 2021 Law contains a set of rules for the protection of minors from harmful content with reference to some categories indicative of such content, stipulating:

1. Audiovisual media services that may impair the physical, mental or moral development of minors shall only be provided in a way which ensures that minors will not normally hear or see them. Appropriate measures for the protection of minors include, in particular, labelling programmes, selecting the time of the broadcast, using personal identification numbers (PIN codes), using age verification systems or using any other technical measures with respect to the principle of proportionality. The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.

(...)

7. The presentation of a juvenile offender is prohibited. The presentation or participation of juvenile witnesses or victims of criminal acts or accidents, as well as minors who are at a disadvantage - in all programmes, is prohibited. Exceptionally, the presentation of minors who fall under the cases of the previous paragraph is allowed, as long as it is necessary for the information of the public and does not cause harm to the minor's personality and only after written consent of the persons exercising parental care or custody. In any case, it is prohibited to disclose in any way incidents that could lead to the disclosure of the identity of any minor who is the victim of an act subject to crimes against sexual freedom and economic exploitation of sexual life, from the denouncement of the act until the issuance of an irrevocable decision.

(...)

9. Audiovisual media service providers must not broadcast any programme that involves scenes of physical, verbal or psychological violence unless this is necessary for public information about a specific event.

The 2021 Law, in its Article 32, paragraph 1 points (b) and (c), establishes detailed rules, the scope of which covers the relevant provisions of the Greek audiovisual legislation currently in force, as well as the provisions set out in the Greek Penal Code for terrorist offences, child pornography and offences concerning racism or xenophobia. It states:

Without prejudice to Articles 12 to 15 of Directive 2000/31/EC (Presidential Decree 131/2003, Government Gazette A/116), video-sharing platform providers under Greek jurisdiction should take appropriate measures to protect: [...]

(a) minors from programmes, user-generated videos and audiovisual commercial communications which may negatively impair their physical, mental or moral development in accordance with paragraph 1 of Article 9;

(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 race, colour, ethnic or national origin, genealogical ancestry, religion, disability, sexual orientation, identity or gender characteristics;

(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 and national law, namely child pornography as set out in Articles 348A-348D of the Penal Code and offences concerning racism and xenophobia as set out in Law 927/1979 (A 139), Article 82A GPC and paras. 2-3 of Article 184 of the Penal Code.

Article 32 paragraph 2 of the 2021 Law, with regard to audiovisual commercial communications transmitted by VSPs stipulates:

Video-sharing platform providers:

[a] must comply with the requirements set out in Article 14 par. 1 with respect to audiovisual commercial communications that are marketed, sold or arranged by them;

[b] must take appropriate measures to comply with the requirements set out in Article 14 par. 1 with respect to audiovisual commercial communications that are not marketed, sold or arranged by them, taking into account the limited control exercised by the video-sharing platforms over those audiovisual commercial communications.

The video-sharing platform providers must clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared under point (c) of paragraph 3 or the provider has knowledge of that fact.

5.14.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, Article 32 of the 2021 Law, paragraph 3(a) stipulates this obligation by transposing the text of the revised AVMSD verbatim, as follows:

The measures adopted by the video-sharing platform providers shall consist of, in particular: (a) including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1, as well as the measures undertaken in order to ensure the fulfilment of these terms.

5.14.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers, Article 32, paragraph 3(b) of the draft AVMS Regulation uses the language of the revised AVMSD:

(b) including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 14 par. 1 for audiovisual commercial communications



that are not marketed, sold or arranged by the video-sharing platform providers, as well as the measures undertaken in order to ensure the fulfilment of these terms.

5.14.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 32, paragraph 3(c) of the draft AVMS Regulation transposes these obligations verbatim, as follows:

(c) having a functionality for users who upload videos generated by them or by other users to declare, as far as they know or can be reasonably expected to know, whether such videos contain audiovisual commercial communications.

5.14.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the VSP provider, Article 32, paragraph 3(d) of the draft AVMS Regulation transposes the revised AVMSD verbatim in respect of these obligations:

(d) establishing and operating transparent and user-friendly mechanisms allowing users of the platform to report or flag to the provider any uploading of content that might be harmful to minors or the general public according to the provisions of paragraph 1 of this Article.

5.14.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 32, paragraph 3(e) of the draft AVMS Regulation transposes the text of the revised AVMSD verbatim, as follows: “(e) establishing and operating systems through which they are able to inform the users of the platform what effect has been given to the reporting and flagging referred to in point (d).”



5.14.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 32, paragraph 3(f) of the draft AVMS Regulation transposes the text of the revised AVMSD verbatim, as follows:

(f) establishing and operating age verification systems for users of video-sharing platforms in order to prevent minors from access to any content which may negatively impair their physical, mental or moral development.

5.14.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 32, paragraph 3(g) of the draft AVMS Regulation uses the text of the revised AVMSD as follows: “(g) establishing and operating easy-to-use systems allowing users of the platform to rate the content referred to in paragraph 1 of this Article.”

5.14.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 32, paragraph 3(h) of the draft AVMS Regulation transposes the revised AVMSD verbatim, as follows:

(h) providing for parental control systems that are under the control of the end-user in order to prevent minors from access to any content which may negatively impair their physical, mental or moral development.”

5.14.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP



provider in relation to the implementation of the measures, Article 31, paragraph 3(i) of the draft AVMS Regulation transposes the revised AVMSD verbatim, as follows:

(i) establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the provider in relation to the implementation of the measures referred to in points (d) to (h).

5.14.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 32, paragraph 3(j) of the draft AVMS Regulation provides for the establishment of media literacy measures and tools: “(j) providing for effective media literacy measures and tools, as well as raising users' awareness of those measures and tools.”

5.14.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 32, paragraph 3 of the draft AVMS Regulation uses the same text, as provided for in the revised AVMSD:

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

5.14.3.13. Other relevant provisions related to the protection of minors

N/A.

5.14.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 14 of the 2021 Law contains detailed rules for the protection of the general public and minors in accordance with the text of the AVMSD, without any definition with regard to commercial communications that may be detrimental to the physical, mental or moral development of minors.



5.14.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

Article 14 of the 2021 Law prohibits audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers, and stipulates that audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages. Furthermore, the 2021 Law does not contain any specific provisions related to advertising for alcohol products and HFSS foods in commercial communications transmitted by VSPs. Instead, according to Article 32, paragraph 2 subparagraph 3, VSPs are encouraged to take self-regulatory measures in order to prevent minors from immoderate consumption of foods and beverages containing nutrients and substances that are not recommended.

5.14.3.16. Other relevant information

N/A.

5.14.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

According to Article 33 paragraph 5 of the 2021 Law, VSPs, in order to comply with the provisions relative to the protection of minors and the general public, as well as commercial communications, should adopt appropriate and proportionate measures, taking into account the following parameters:

- the nature of the service
- the harm that may be caused
- the characteristics of the category of persons to be protected
- the rights and legitimate interests at stake, including those of the VSP providers and the users who created or uploaded the content
- the general public interest.



5.14.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and video-sharing platform providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.14.5.1. Regulatory body

The competent regulatory body is the National Council of Radio and Television (NCRTV).²²⁵

5.14.5.2. Existence of a registration/notification system

According to Article 31 paragraph 5 of the 2021 Law, NCRTV establishes and maintains an up-to-date list of the VSPs established or deemed to be established on Greek territory and indicates on which of the criteria the jurisdiction of the country is based. The NCRTV has the authority to define the documents submitted by the VSPs. That list, including any updates thereto, shall be communicated to the Commission and to the competent minister.

5.14.5.3. Compliance, enforcement and sanctioning powers

Article 32 paragraph 9, of the 2021 Law provides for monitoring and sanctioning powers of NCRTV towards VSPs:

The assessment of the compliance of VSP , with regards to the obligations set out in paragraphs 1 and 2 of this Article, are delegated to NCRTV. NCRTV has the authority to carry out audits through its employees or to assign such audits to third parties and to impose the sanctions provided for in Article 36.

According to Article 51 paragraph 6, the specific obligation of VSPs for the implementation of the measures provided for in paragraph 6 of Article 32 shall be determined, whenever shall be deemed appropriate, by a decision of the minister to whom the responsibilities of the Secretariat General of Communication and Information have been assigned, after consulting NCRTV and the National Telecommunications and Post Commission.

²²⁵ <https://www.esr.gr/information/>.



Article 32 paragraph 10 provides that VSPs under Greek jurisdiction must submit to NCRTV, in a manner and at a time defined by NCRTV, information concerning:

- (a) the number of complaints received per topic category, such as hate speech, protection of minors, child pornography, or per category of content such as programmes, user-generated videos, commercial communications of the VSPs or users, as these are defined in paragraph 1;*
- (b) the number of complaints that have been examined, as well as the time it took them to respond;*
- (c) the number of cases for which users resorted to a mediation mechanism;*
- (d) the number of reporting or flagging cases made by users in relation to harmful or illegal content or its age verification system;*
- (e) the age verification systems or parental control systems established by the VSPs;*
- (f) the tools adopted in order to promote media literacy;*
- (g) any other information that NCRTV could specify in the future as relevant by a decision of its board.*

According to Article 36 paragraph 3, in the event of a violation of the obligations imposed by Article 32 paragraph 6, NCRTV may impose sanctions on VSPs that range from warnings to a permanent shutdown order:

- (a) recommendation*
- (b) administrative fine from EUR 1 000 to EUR 500 000*
- (c) pause of transmission from 1 day to 3 months, and*
- (d) permanent shutdown in proportion to the kind and gravity of the violation in cause.*

The gravity of the violation, the degree of fault, the financial situation of the provider, as well as the existence of recurrence are taken into account when choosing the penalty to be imposed.

5.14.5.4. Development of self- or co-regulatory codes or schemes

According to Article 32 paragraph 8 of the 2021 Law, NCRTV encourages the development of co-regulatory codes for all the measures to be taken by VSPs in order to comply with their new obligation to protect the general public and minors. At present, there are no self- or co-regulatory codes of conduct or self-regulatory mechanisms in place for VSPs under Greek jurisdiction.

5.14.5.5. Out-of-court redress mechanisms for users

The Law on Mediation in Civil and Commercial Affairs has established an out-of-court redress mechanism also available for the settlement of disputes between users and VSPs. The recent changes, which stipulate that mediation is mandatory for certain categories of



dispute, does not include disputes between users and VSPs in these categories of mandatory mediation.

5.14.5.6. Rights before a court for users

No specific provision of the 2021 Law deals with this issue, but nothing prevents users from asserting their right before a court.

5.14.6. Studies, reports and research

N/A.

5.14.7. Data compilation

This factsheet is based on data compiled by Charis Tsigou, Attorney at Law, TMK Law Firm.



5.15.HR – Croatia – National legal summary²²⁶

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the draft proposal of the new Electronic Media Act (draft Electronic Media Act).

5.15.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft proposal of the new Electronic Media Act (*Nacrt Zakona o elektroničkim medijima*).²²⁷
- Electronic Commerce Act (*Zakon o elektroničkoj trgovini*).²²⁸

5.15.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 35. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	No.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Croatian response to European Audiovisual Observatory standardised survey

²²⁶ The factsheet on Croatia incorporates feedback received from Agency for Electronic Media (AEM) during the checking round with the national regulatory authorities.

²²⁷ <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=13393>.

²²⁸ https://narodne-novine.nn.hr/clanci/sluzbeni/2003_10_173_2504.html.



5.15.2.1. VSP service

Article 3(1)11 of the draft Electronic Media Act provides for the definition of a VSP service by transposing the text of the revised AVMSD verbatim, as follows:

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 whose organisation is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.

5.15.2.2. VSP provider

There is no definition of a VSP provider in the draft Electronic Media Act, although the text of the draft refers to it.

5.15.2.3. User-generated video

Article 3(1)14 of the draft Electronic Media Act provides for the definition of user-generated video, by transposing the text of the revised AVMSD verbatim, as follows:

“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 by that user or any other user to a video-sharing platform.

5.15.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.15.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.15.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil with these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.15.3.1. General provisions

The scope of the legal obligation with regard to the protection of the general public, from content inciting to violence or hatred or dissemination, terrorism, child pornography, illegal use of personal data, violations of equality and privacy, etc., stem from the Criminal Code (Official Gazette 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19),²²⁹ including provisions with regard to public incitement to violence and hatred, but they are also found in the Media Act (Official Gazette 59/04, 84/11 i 84/13),²³⁰ the Electronic Commerce Act and the current and draft Electronic Media Act. The same is to be said for rules related to commercial communications and those pertaining to the protection of minors.

Specific provisions for VSPs with regard to content inciting violence and hatred and illegal content, the protection of minors and commercial communications are included in the draft Electronic Media Act. Specifically, Article 95 (1)-(3) provides for mechanisms stemming from the wording of revised AVMSD:

(1) Video-sharing platform providers that fall under the jurisdiction of the Republic of Croatia shall implement the following measures regarding the protection of:

- minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 25 of this Act;*
- the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred*

²²⁹ https://narodne-novine.nn.hr/clanci/sluzbeni/1997_10_110_1668.html.

²³⁰ https://narodne-novine.nn.hr/clanci/sluzbeni/2004_05_59_1324.html.



directed against a group of persons or a member of a group based on Article 14. of this Act;

- 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, which constitutes public incitement to commit a criminal terrorist offence in accordance with Article 99 of the Criminal Code, criminal offences with regard to child pornography in accordance with Article 163 of the Criminal Code and criminal offences with regard to racism and xenophobia in accordance with Article 125 of the Criminal Code.

(2) Video-sharing platform providers shall comply with the requirements set out in Article 22 from paragraph 1 to 8 of this Act with respect to audiovisual commercial communications that are marketed, sold or arranged by those video-sharing platform providers.

(3) Video-sharing platform providers shall clearly inform users where user-generated videos contain audiovisual commercial communications, and shall comply with the requirements set out in Article 22 from paragraph 1 to 8 of this Act.

5.15.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, Article 95 (7)1 introduces these obligations and stipulates:

(7) For the purposes of the implementation of subparagraph 1 of paragraph 1 of this Article, the most harmful content shall be subject to the strictest access control measures and those are:

- including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1 of this Article.

5.15.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers, Article 95 (7)2 of the draft Electronic Media Act transposes these obligations verbatim, as follows:

including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 22 paragraphs 1 to 8 of this Act for audiovisual



commercial communications that are not marketed, sold or arranged by the video-sharing platform providers.

5.15.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 95 (7)3 of the draft Electronic Media Act transposes these obligations verbatim from the revised AVMSD:

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.

5.15.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the video-sharing platform provider, Article 95 (7)4 of the draft Electronic Media Act transposes these obligations verbatim, as follows:

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 of this Article provided on its platform.

5.15.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which video-sharing platform providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 95 (7)5 of the draft Electronic Media Act transposes the text of the revised AVMSD verbatim, as follows:

establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in subparagraph 4 of this Article.



5.15.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 95 (7)6 of the draft Electronic Media Act transposes the obligations verbatim, as follows: “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.”

5.15.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 95 (7)7 of the draft Electronic Media Act provides for a verbatim transposition of the text of revised AVMSD: “establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1 of this Article.”

5.15.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 95 (7)8 of the draft Electronic Media Act transposes these obligations verbatim, as follows: “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.”

5.15.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 95 (7)9 of the draft Electronic Media Act transposes the text of the revised AVMSD verbatim, as follows:

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 subparagraphs (4) to (8) of this paragraph.

5.15.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 95. (7)¹⁰ of the draft Electronic Media Act uses the wording of the revised AVMSD in this regard: “providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.”

5.15.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 95 (8) of the draft Electronic Media Act transposes these obligations verbatim, as follows:

Personal data of minors collected or otherwise gathered by video-sharing platform providers pursuant to paragraph 7 subparagraphs 6 and 8 of this Article shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

5.15.3.13. Other relevant provisions related to the protection of minors

A number of obligations set forth in Article 25 (2)-(5) of the draft Electronic Media Act further stipulate the obligations relative to the protection of minors, relative to content which might seriously impair or is likely to impair the physical, mental or moral development of minors, relative to the identity of a child and the protection of personal data.

5.15.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Legal obligations for all media service providers with regard to commercial communications that may be detrimental to the physical, mental or moral development of minors is included in Article 22 of the draft Electronic Media Act, with a number of provisions related to a range of criteria.



5.15.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

Legal obligation with regards to minors' exposure to advertising for alcohol products in commercial communications on VSPs refers to Article 22 paragraph 6 of the draft Electronic Media Act which forbids audiovisual commercial communications for alcoholic beverages to be aimed specifically at minors.

With regard to HFSS foods in commercial communications there is a provision in Article 95 paragraph 5 concerning VSP providers and it refers to establishing codes of conduct for such commercial communications. It states:

(5) The Council shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 11 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 intake in the overall diet is 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.

5.15.3.16. Other relevant information

N/A.

5.15.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

According to Article 95 (6) of the draft Electronic Media Act, these obligations are transposed in the same manner as stipulated by the revised AVMSD:

(6) For the purposes of paragraphs 1 and 2 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. 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 and 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.

5.15.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.15.5.1. Regulatory body

The competent regulatory body is the Electronic Media Council (CEM)²³¹ that manages the Agency for Electronic Media and carries out the duties of a regulatory body in the area of electronic media.

5.15.5.2. Existence of a registration/notification system

Regarding the registration of VSPs, Article 6 of the draft Electronic Media Act stipulates:

(1) The activity of broadcasting audio and/or audiovisual media services as well as electronic publications and video-sharing platform services under this Act shall be performed by providers registered in the court register or other register prescribed in the Republic of Croatia, and if, along with the general conditions, its head office and editorial office are in the Republic of Croatia.

(2) By way of derogation from paragraph 1 of this Article, the electronic publication and video-sharing platform provider whose head office is located in another member state of the European Union or another state which is a contracting party to the Agreement on the European Economic Area may permanently perform the activity in the Republic of Croatia if they register in the court registry or other appropriate registry and have an editorial office in the Republic of Croatia.

²³¹ <https://www.aem.hr/>.



(3) The electronic publication and video-sharing platform provider whose head office is located in another member state of the European Union or another state which is a contracting party to the Agreement on the European Economic Area may perform the activity in the Republic of Croatia on a temporary or occasional basis, in accordance with the provisions of the Services Act.

Furthermore, Article 94 (6) stipulates:

(6) The Council shall maintain an up-to-date list of the video-sharing platform providers established or deemed to be established in the Republic of Croatia and this list shall indicate on which of the criteria set out in paragraphs 1 to 4 of this Article their jurisdiction is based.

With regard to a notification system, Article 99 (2) of the draft Electronic Media Act provides for a 60-day *a priori* notification procedure to the CEM:

(2) Video-sharing platform providers which have begun their activities before the entry into force of this Act, shall within 60 days of the date of entry into force of this Act submit evidence of their activities to the Electronic Media Council.

5.15.5.3. Compliance, enforcement and sanctioning powers

Article 95 (9) and (10) of the draft Electronic Media Act provides for the CEM's role in relation to the regulation of VSPs:

(9) For the purposes of the implementation of paragraphs 1 to 7 of this Article, the Council shall encourage implementation of procedures referred to in Article 12 of this Act.

(10) The Council shall implement mechanisms for the assessment of implemented measures referred to in paragraph 7 of this Article by video-sharing platform providers.

Article 97 (1) further stipulates the enforcement and sanctioning mechanism for the CEM, in terms of financial fines for a series of offences.

5.15.5.4. Development of self- or co-regulatory codes or schemes

Article 12 of the draft Electronic Media Act provides for the establishment of self- and co-regulatory mechanisms:

(1) Pursuant to this Act, particular issues may be regulated by self-regulatory or co-regulatory regimes through codes of conduct for the purpose of standardising their application in practice.

(2) Codes of conduct referred to in paragraph 1 of this Article shall:



- *be such that they are accepted by the main stakeholders;*
- *clearly and unambiguously set out their objectives;*
- *provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at;*
- *provide for effective enforcement including effective and proportionate sanctions.*

Article 95 (5) of the Act further stipulates the encouragement of these mechanisms:

(5) The Council shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 11 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 intake in the overall diet is 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.

There are currently no co-regulatory acts or measures that pertain to VSPs, except for the code of conduct for advertising and market communications of the Croatian Association of Communications Agencies (HURA), which takes into consideration the content of VSPs.

5.15.5.5. Out-of-court redress mechanisms for users

No specific provision of the draft Electronic Media Act deals with this issue.

5.15.5.6. Rights before a court for users

No specific provision of the draft Electronic Media Act deals with this issue, but nothing prevents users from asserting their rights before a court.

5.15.6. Studies, reports and research

N/A.

5.15.7. Data compilation

This factsheet is based on data compiled by Hrvoje Lisičar, Associate Professor, Faculty of Law, University of Zagreb.



5.16.HU – Hungary – National legal summary²³²

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) have been transposed into the Act on Media Services and on the Mass Media (in 2019) and the Act on Electronic Commerce and on Information Society Services (in 2020).

5.16.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Act on Media Services and on the Mass Media²³³ (2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról).²³⁴
- Act on Electronic Commerce and on Information Society Services²³⁵ (2001. évi CVIII. Törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről).²³⁶
- Act on the Basic Requirements and Certain Restrictions of Commercial Advertising²³⁷ (2008. évi XLVIII. Törvény a gazdasági reklámtevékenység alapvető feltételeiről és egyes korlátairól).²³⁸
- Criminal Code²³⁹ (2012. évi C. törvény a Büntető Törvénykönyvről).²⁴⁰

5.16.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

²³² The factsheet on Hungary incorporates the feedback received from György Ocskó, International Legal Advisor at the National Media and Infocommunicaitons Authority (NMHH), during the checking round with the national regulatory authorities.

²³³ http://english.nmhh.hu/document/106487/act_clxxx_on_media_services_and_mass_media.pdf.

²³⁴ <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>.

²³⁵ http://nmhh.hu/document/213838/act_cviii_of_2001.pdf.

²³⁶ <https://net.jogtar.hu/jogszabaly?docid=a0100108.tv>.

²³⁷ <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.viewFile&lawID=26&languageID=EN>.

²³⁸ <https://net.jogtar.hu/jogszabaly?docid=a0800048.tv>.

²³⁹ https://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf.

²⁴⁰ <https://net.jogtar.hu/jogszabaly?docid=a1200100.tv>.



Table 36. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Hungarian response to European Audiovisual Observatory standardised survey

5.16.2.1. VSP service

Article 203 (71a) of the Act on Media Services and on the Mass Media defines the term “video-sharing platform service” by expanding the definition provided by the revised AVMSD in terms of determining that this type of service is commercial in its nature and is performed on a regular basis for economic purposes, as follows:

an economic service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, pursued commercially on [the VSP provider’s] own account – performed on a regular basis under economic exposure with a view to making a profit –, 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 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.

5.16.2.2. VSP provider

Article 203 (71b) of the Act on Media Services and on the Mass Media defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “the natural or legal person who provides a video-sharing platform service”.

5.16.2.3. User-generated video

Article 203 (10a) of the Act on Media Services and on the Mass Media defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:



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.

Also, Article 3.3 of the Code of Ethics adopted by the Association of Hungarian Content Providers (MTE)²⁴¹ defines the term “user-generated content” as follows:

Information represented with the help of technologies provided by the Content Provider, on platforms belonging to the Content Provider, created by any user or group of users, qualifies as user-generated content – irrespective of whether the Content Provider claims for itself the right of subsequent correction (moderation) of such contents.

5.16.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret these concepts.

5.16.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret this concept.

5.16.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

²⁴¹ <http://mte.hu/etikai-kodex/>.



5.16.3.1. General provisions

The obligations stemming from Article 28b (1) and (2) of the revised AVMSD in terms of protecting the general public and, in particular, minors from certain content are transposed into Section 15/D of the Act on Electronic Commerce and on Information Society Services as follows:

(1) In the interest of protection of viewers, video-sharing platform providers shall implement the measures and technological solutions provided for in Section 15/F if:

a) any programme, user-generated video provided to the general public by the video-sharing platform provider, commercial communications marketed, sold or arranged by the video-sharing platform provider or others (hereinafter referred to as “content”) may impair the physical, mental, spiritual or moral development of minors;

b) any content provided to the general public by the video-sharing platform provider is contrary to human dignity, and may contain facilities for inciting violence or hatred directed against peoples, nations, national, ethnic, linguistic and other minorities, or any majority or religious community, or any member thereof, for belonging to such group;

c) the content may constitute the commission of a crime or abetting the commission of a crime, in particular if it may contain facilities for abetting the commission of a terrorist act, incitement against a community, open denial of Nazi crimes and communist crimes, and/or for the sharing, distribution or transmission of child pornography content; or

d) the commercial communication broadcast by the user of video-sharing platform service does not comply with the requirements laid down in Subsections (1)-(7) of Section 20 of Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content (hereinafter referred to as the “Press Act”) or Section 24 of the Media Act.

(2) Commercial communications marketed, sold or arranged by video-sharing platform providers must comply with the requirements laid down in Subsections (1)-(7) of Section 20 of the Press Act or Section 24 of the Media Act.

(3) Video-sharing platform providers shall provide viewers with clear information on programmes containing commercial communication and on user-generated videos for which they made a statement under Paragraph b) of Section 15/G, or where the video-sharing platform provider is aware that it contains a commercial communication.

(4) Where any content provided to the general public by a video-sharing platform provider infringes the right of the right-holder referred to in Subsection (1) of Section 13 therein provided for, the right-holder in question may call upon the video-sharing platform provider to remove the infringing content. The notice and the procedure shall be governed by Subsections (1)-(12) of Section 13.

(5) Where any content provided to the general public by a video-sharing platform provider infringes the right of the minor right-holder referred to in Subsection (13) of Section 13



therein provided for, the minor right-holder, or his or her legal representative if the minor is of limited legal capacity, may call upon the video-sharing platform provider to remove the content alleged to violate the personality rights of the minor right-holder. The notice and the procedure shall be governed by Subsection (13)-(15) of Section 13.

(6) For the purposes of applying Section 7, video-sharing platform providers shall be subject to the provisions of Section 10 applicable to intermediary service providers specified in Subparagraph lc) of Paragraph l) of Section 2. This provision shall be without prejudice to the obligations of video-sharing platform providers set out in Section 15/D-15/G.

This section expands on the rules contained in Article 28b (1) and (2) of the revised AVMSD by referring to content “contrary to human dignity” and content constituting “open denial of Nazi crimes and communist crimes” and by creating rules meant to protect right-holders.

5.16.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to under section 1.1.3.1, Section 15/E (1) of the Act on Electronic Commerce and on Information Society Services imposes the following, by expanding the requirements of the revised AVMSD to include the obligation on VSP providers to adequately specify under their terms and conditions the technological solutions in place which enable the protection of users from harmful content:

In order to provide users and customers with adequate information and to facilitate the enforcement of requirements relevant to contents, video-sharing platform providers shall mention in their general terms and conditions the cases and the requirements described in Subsection (1) of Section 15/D, as well as the measures and technological solutions provided for in Section 15/F designed to ensure compliance with them.

5.16.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Section 15/E (2) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, in line with the revised AVMSD:

Video-sharing platform providers shall mention in their general terms and conditions the requirements set out in Section 24 of the Media Act and Subsections (1)-(7) of Section 20 of



the Press Act relevant to commercial communications broadcast by the users of video-sharing platform services.

5.16.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Section 15/G (b) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding the requirements of the revised AVMSD to include an obligation to make the functionality “transparent, effective and user-friendly”:

Video-sharing platform providers shall have in place transparent, effective and user-friendly mechanisms, functions [...] b) for users who upload user-generated videos to declare whether such videos contain commercial communications as far as they know.

5.16.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the VSP provider, Section 15/G (c) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding the requirements of the revised AVMSD to include an obligation to make the mechanism “effective”:

Video-sharing platform providers shall have in place transparent, effective and user-friendly mechanisms, functions [...] c) for users to report or flag to the video-sharing platform provider concerned any content alleged to infringe the requirements referred to in Subsection (1) of Section 15/D, or to lodge a complaint relating to such content.

5.16.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Section 15/G (d) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding the requirements of the revised AVMSD to make the system “transparent, effective and user-friendly”:



Video-sharing platform providers shall have in place transparent, effective and user-friendly mechanisms, functions [...] d) to describe in clear and plain language to users the process and what effect has been given to the declaration, reporting and flagging referred to in Paragraphs b) and c), and on the handling of complaints.

5.16.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Section 15/F of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding from the requirements of the revised AVMSD to make the system “effective”:

(1) Video-sharing platform providers shall introduce sufficient measures and effective technological solutions so as to ensure compliance with the requirements described in Subsection (1) of Section 15/D.

(2) With a view to enforcing the requirement set out in Paragraph a) of Subsection (1) of Section 15/D, video-sharing platform providers shall have in place effective age verification and parental control systems, that are under the control of the users.

(3) Having regard to Subsection (2), the age verification and parental control systems shall be considered effective if realistically capable of ensuring compliance with the requirements set out in Paragraph a) of Subsection (1) of Section 15/D relying on the verification of the true age of users and viewers, specifically that minors will not normally hear or see such harmful content.

5.16.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, no specific legal provision under the Act on Electronic Commerce and on Information Society Services deals with this issue.

5.16.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Section 15/F of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding the requirements of the revised AVMSD to include an obligation to make the system “effective”:

(1) Video-sharing platform providers shall introduce sufficient measures and effective technological solutions so as to ensure compliance with the requirements described in Subsection (1) of Section 15/D.

(2) With a view to enforcing the requirement set out in Paragraph a) of Subsection (1) of Section 15/D, video-sharing platform providers shall have in place effective age verification and parental control systems, that are under the control of the users.

(3) Having regard to Subsection (2), the age verification and parental control systems shall be considered effective if realistically capable of ensuring compliance with the requirements set out in Paragraph a) of Subsection (1) of Section 15/D relying on the verification of the true age of users and viewers, specifically that minors will not normally hear or see such harmful content.

5.16.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Section 15/G (c) (d) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, in line with provisions stipulated under the revised AVMSD:

Video-sharing platform providers shall have in place transparent, effective and user-friendly mechanisms, functions [...] c) for users to report or flag to the video-sharing platform provider concerned any content alleged to infringe the requirements referred to in Subsection (1) of Section 15/D, or to lodge a complaint relating to such content d) to describe in clear and plain language to users the process and what effect has been given to the declaration, reporting and flagging referred to in Paragraphs b) and c), and on the handling of complaints.

5.16.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Section 15/H of the Act on Electronic Commerce and on Information Society Services imposes the following



obligation, in line with the respective provisions under the revised AVMSD: “Video-sharing platform providers shall have in place media literacy measures and tools and raise users’ awareness of those measures and tools.”

5.16.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Section 15/F (6) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, in line with the respective provisions under the revised AVMSD:

Personal data of minors collected or otherwise generated by video-sharing platform providers pursuant to Subsections (1) and (2) shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

5.16.3.13. Other relevant provisions related to the protection of minors

The Act on Electronic Commerce and on Information Society Services provides the following safeguard for the protection of minors:

Section 4/A

Any information published by a service provider – that is not recognised as media content in accordance with Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content – whose content might seriously impair the physical, mental, spiritual and moral development of minors, in particular those that are dominated by graphic scenes of violence and/or sexual content and that depicts nudity, may be published only with warning labels displaying – in advance – on the sub-page that contains the information about the potential harm it may cause to children, and with identifiers incorporated into the source code indicating the content category, and which can be identified by the content-filtering software provided for in Subsection (1) of Section 149/A of Act C of 2003 on Electronic Communications (hereinafter referred to as “ECA”) (hereinafter referred to as “content-filtering software”).

The enforcement of the above legal provision is monitored by the Internet Round-table Conference for the Protection of Children.

Article 7 of the Code of Ethics adopted by the Association of Hungarian Content Providers (MTE)²⁴² also contains certain commitments (adopted within the framework of self-regulation) to ensure appropriate measures are taken to protect minors from harmful content, such as age verification and filtering, by stating specifically the following:

²⁴² <http://mte.hu/etikai-kodex/>.



Content Providers commit themselves to inform users before entering a service in case it is, wholly or partially, susceptible of being harmful for minors. Attention must be raised to the quality of such contents before accessing them, and the user must actively confirm that he/she has passed the prescribed age limit; the space reserved for this purpose may not contain visual, textual, or any other kind of items pertaining to the actual content.

Content Providers commit themselves to make every effort to avoid the unsolicited presentation of any contents that are inappropriate for minors and juveniles, or severely injurious or shocking to a part of users. It is a basic principle to be respected in the case of both edited and user-generated contents to notify users before accessing such contents.

Furthermore, Content Providers commit themselves to make services, or information regarding the ways of utilising services, easily accessible, when these may be used for the prior filtering of pages accessible for minors (the so-called filters) in the hands of persons in charge of taking care of minors. Such filters may include, among others: – AOL Parental Control – Bair Filtering System – CSM Proxy Server – Cyber Sentinel – Eyeguard – Genesis – Ifilter – Internet Sheriff – I-Gear – Kahootz – Kidz.Net – Net Nanny – Surfwatch – Too C.O.O.L. – Websense.

Additional protective measures for minors have been drawn up by the Hungarian Code of Advertising Ethics²⁴³ for the purpose of providing professional and ethical norms for those engaged in advertising activities in Hungary. It has been envisaged that through the application of the Code, the self-regulation is recognised by the Hungarian Parliament in the preamble to the Act on Fundamental Conditions of Economic Advertising Activities and it is implemented the Act on Prohibiting Unfair Commercial Practices towards Consumers.

Article 18 of said code stipulates provisions for the advertising of food products; furthermore, Article 19 of the code provides provisions regarding the advertising of alcoholic beverages. The code was reviewed and approved by organisations of the advertising profession on 17 February 2015. It is applicable from 30 June 2015.

5.16.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Section 8 of the Act on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities imposes on all types of advertising certain obligations related to the protection of minors, with regard, for example, to exposure to violence or portraying them in situations of danger, by declaring the following:

(1) No advertisement may be disseminated if it is capable of harming the physical, intellectual or moral development of children and young persons.

(2) No advertisement addressed to children and young persons may be disseminated if it has the capacity to impair the physical, mental or moral development of children and young

²⁴³ <http://www2.ort.hu/en/code/foreword>.



persons, in particular those that depict or make reference to gratuitous violence or sexual content, or that are dominated by conflict situations resolved by violence.

(3) No advertisement may be disseminated if it portrays children or young persons in situations depicting danger or violence, or in situations with sexual emphasis.

(4) No advertisement of any kind may be disseminated in child welfare and child protection institutions, kindergartens, grammar schools and in dormitories for students of grammar schools. This ban shall not apply to the dissemination of information intended to promote healthy lifestyles, the protection of the environment, or information related to public affairs, educational and cultural activities and events, nor to the display of the name or trademark of any company that participates in or makes any form of contribution to the organisation of such events, to the extent of the involvement of such company directly related to the activity or event in question.

5.16.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

According to Article 9.4 of the AVMSD, member states shall encourage the use of co- and self-regulation regarding inappropriate audiovisual commercial communications accompanying or included in children's programmes.

Regarding this issue, Section 15/D of the Act on Electronic Commerce and on Information Society Services specifically declares the following:

(1) In the interest of protection of viewers, video-sharing platform providers shall implement the measures and technological solutions provided for in Article 15/F if [...] d) the commercial communication broadcast by the user of video-sharing platform service does not comply with the requirements laid down in Sections (1)-(7) of Article 20 of Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content (hereinafter referred to as "Press Act") or Article 24 of the Media Act.

(2) Commercial communications marketed, sold or arranged by video-sharing platform providers must comply with the requirements laid down in Sections (1)-(7) of Article 20 of the Press Act or Article 24 of the Media Act.

More specifically, Article 15/M (5) almost literally transposes Article 9.4 by adding the following:

Self-regulatory bodies shall encourage their members to introduce adequate measures through codes of conduct aiming at effectively reducing the exposure of children to electronic communications, 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 intake in the overall diet is not



recommended, furthermore, they shall encourage their members to provide that such electronic communications, commercial communications for foods and beverages do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

5.16.3.16. Other relevant information

The 2012 Criminal Code contains certain articles that pertain to the concepts at stake and are relevant to the regulation of VSPs, such as those related to acts of terrorism, incitement against a community and child pornography.

As an important institutional tool and dedicated institution for the online protection of minors in Hungary, the National Media and Infocommunications Authority (NMHH) successfully operates the Internet Hotline service,²⁴⁴ an online information and help service operated by the NMHH in the spirit of corporate social responsibility, since 2011. It operates as a web-based reporting site where illegal and harmful online content can be reported in reporting categories which include: (1) child sexual abuse material, (2) data phishing, (3) cyberbullying, (4) content made accessible without permission, (5) content promoting drug use or (6) terrorism, (7) racist, hateful content or (8) violent content, or (9) other content harmful to minors. Internet users may file reports through the hotline's online interface²⁴⁵ or the dedicated email address.²⁴⁶ The Internet Hotline service does not collect any information about people who file reports – anyone can ask for help, even anonymously. The activity of the Internet Hotline is not for the benefit of the authorities, it acts in the public interest. Lacking statutory powers, the Internet Hotline and its operator, the NMHH cannot call for the deletion of any content or the inclusion of a warning of content harmful to minors.

The Internet Hotline may only request the removal of the contested content by citing that it might infringe legislation. An investigation initiated on the basis of a report is not an official procedure because it would be subject to different legislation. The Internet Hotline has no official authority, it does not conduct official proceedings, it does not impose official fines and a report does not qualify as an official case. It can only investigate Internet abuse that does not fall within the exclusive jurisdiction of another authority, court, or other public body.

It is also worth noticing that incitement to hatred has been described by the Hungarian Constitutional Court:

According to the law, the term "incitement" is not the expression of some unfavourable and offensive opinion, but virulent outbursts which are capable of whipping up intense emotions in the majority of people which, upon giving rise to hatred, may result in disturbing the social order and peace (Curia, 7 Crim. Law Reports 272). This way, criticism, disapproval,

²⁴⁴ More information on the 2020 annual results of the Internet Hotline under:
https://english.nmhh.hu/article/218294/Home_confinement_intensified_online_abuse.

²⁴⁵ <http://nmhh.hu/internethotline/>.

²⁴⁶ internethotline@internethotline.hu.



objections or even offensive declarations do not constitute incitement; incitement occurs only when the expressions, comments, etc. do not address reason but they seek to influence the world of emotions and are capable of arousing passion and hostile feelings. For the concept of incitement it is totally irrelevant whether or not the facts stated are true; what matters is that the specific composition of data, no matter if true or false, is capable of arousing hatred. (Curia, 1 Crim. Law Reports 124).²⁴⁷

5.16.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content

This section aims at identifying how this is implemented in the national legislation.

Section 15/F of the Act on Electronic Commerce and on Information Society Services takes the principle of proportionality into consideration, especially under paragraph 4, by declaring the following:

...(4) The measure provided for in Subsections (1) and (2) shall be considered appropriate if proportionate to the harm or damage the content may cause. In terms of proportionality, the measures shall be determined in light of the nature of the content in question, the damage or harm it may cause, the characteristics of the category of persons to be protected, the size and nature of the video-sharing platform service in question, 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. In the case provided for in Paragraph a) of Subsection (1) of Section 15/D, the most harmful content shall be subject to the strictest access control measures.

5.16.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as to the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-

²⁴⁷http://hunconcourt.hu/uploads/sites/3/2017/11/en_0012_1999.pdf (ENG)

<http://public.mkab.hu/dev/dontesek.nsf/0/492D281B4506140EC1257ADA0052AA1E?OpenDocument> (HUN).



of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.16.5.1. Regulatory body

The competent regulatory body for VSPs is the Office of the NMHH.²⁴⁸

5.16.5.2. Existence of a registration/notification system

VSP providers are obliged under law to notify their respective services to the NMHH. This notification shall be made prior to the launch of the service and shall contain basic administrative information regarding the provider itself.

Any change to this information shall be subject to notification within 15 days under law.

Section 15/C of the Act on Electronic Commerce and on Information Society Services provides detailed provisions regarding the aforementioned notification requirements as cited hereunder:

1) For the purpose of registration, video-sharing platform providers shall send notification to the Office of the Authority (hereinafter referred to as the "Office") declaring their intention to commence the provision of video-sharing platform services, and the Office shall maintain a public register of video-sharing platform services. That register shall be construed as an official public register as regards the data provided for in Paragraphs f)-h) of Subsection (2). Registration is not a precondition for launching the service.

(2) The notification of video-sharing platform services submitted to the Office shall contain:

- a) the notifier's name;*
- b) the notifier's address (registered office or establishment), designation of establishment (establishments) where the service is provided;*
- c) the notifier's contact information (telephone number and electronic mail address);*
- d) the name and contact information (telephone number, mailing address and electronic mail address) of the notifier's executive officer, representative, and of the person in charge of communication with the Authority;*
- e) the notifier's registered number or registration number (official identification number);*
- f) description of the service, and its website address (URL address);*
- g) planned date of launching the service;*
- h) information to indicate on which of the criteria set out in Subsections (1a)-(1d) of Section 1 jurisdiction is based.*

²⁴⁸ <http://nmhh.hu/>.



(3) The Office shall enter the video-sharing platform service, based on the information supplied in the notification, into the register of video-sharing platform services, and shall send a confirmation of registration to the notifier within eight days from the date of registration.

(4) The Office shall communicate the name of the video-sharing platform provider, the designation of the video-sharing platform service, and the details of jurisdiction, including any updates thereto, to the European Commission.

(5) The Office shall withdraw the registration if the designation of the notified video-sharing platform service is identical to, or is confusingly similar to, the designation of a video-sharing platform service that was registered earlier and shown as such in the register at the time the notification was submitted.

(6) The Office shall withdraw the registration of the video-sharing platform service if:

- a) registration should be withdrawn pursuant to Subsection (5);*
- b) the video-sharing platform provider requested to be removed from the register;*
- c) the holder of the right to provide the video-sharing platform service fails to start providing the service within a year from the date of registration thereof, or suspends an ongoing service for over a year;*
- d) the video-sharing platform service was removed from the register by order of the Office for infringements of the requirements set out in Section 15/D-15/G; or*
- e) there is a binding court order in force relating to a trademark infringement stemming from the designation of the video-sharing platform service prohibiting the infringer from proceeding with such infringement.*

(7) Video-sharing platform providers shall notify the Office of any changes in their data on record within fifteen days of the effective date of such changes.

(8) In the event of a change in the video-sharing platform provider's person, the video-sharing platform provider having submitted the original notification shall request to have the relevant records updated as appropriate.

(9) In the event of any breach of the provisions on registration on the video-sharing platform provider's part, the Office shall have power to impose a fine of up to ten million forints, taking account of the principles set out in Subsection (3) of Section 15/l.

5.16.5.3. Compliance, enforcement and sanctioning powers

Compliance with the regulatory framework is ensured by the NMHH which may impose legal sanctions, including fines, the suspension of service provision for up to a total



maximum duration of one week or the removal of non-compliant service providers from the official register of video-sharing platform providers.

Section 15/I of the Act on Electronic Commerce and on Information Society Services details the specific enforcement powers of the NMHH:

1) The Office shall review the operation of the provisions set out in Sections 15/D-15/H – having regard to Section 15/J and Subsection (2) of Section 15/P as well – within the framework of its regulatory authority.

(2) In the event of an infringement the Office shall have power to apply the following legal consequences:

a) prohibit the unlawful conduct, order the video-sharing platform provider to bring the infringement to an end, and impose obligations for the enforcement of the provisions of this Act;

b) order the video-sharing platform provider to publish a notice or the decision on the home page of its website, in the manner and for the period of time specified in the decision;

c) impose a fine up to one hundred million forints;

d) order the video-sharing platform provider to suspend its service for a period of minimum fifteen minutes up to one week; or

e) delete the video-sharing platform service from the register provided for in Subsection (1) of Section 15/C.

(3) In applying the necessary legal measures, the Office – under the principle of equal treatment – shall act in accordance with the principles of progressivity and proportionality; it shall apply the legal consequence proportionately in line with the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the sanction.

(4) The Office shall establish the legal consequences – depending on the nature of the infringement – taking into account the gravity of the infringement, its re-occurrence, continuity, duration, the financial advantage gained as a result of the infringement, the harm caused by the infringement, the number of persons aggrieved or jeopardised by the infringement, the damage caused by the infringement, the violation of personality rights and the impact of the infringement on the market, and other considerations that maybe taken into account in the particular case. Repeated infringement shall mean when the infringer committed the unlawful conduct as established in the definitive administrative decision on the same legal basis and in breach of the same provisions of legislation, in the same subject, repeatedly within three hundred and sixty-five days.

(5) The Office, acting outside its regulatory authority, shall periodically analyse, assess and evaluate the adequacy and effectiveness of the measures taken by video-sharing platform providers pursuant to Section 15/F, and may request data and information from the video-sharing platform providers to that end.



5.16.5.4. Development of self- or co-regulatory codes or schemes

In line with the text of the revised AVMSD, which puts strong emphasis on the development of self- and co-regulatory schemes related to the implementation of obligations of VSPs, Section 15/J of the Act on Electronic Commerce and on Information Society Services elaborates on these schemes in the following manner:

(1) With a view to facilitating voluntary compliance with the law, the Office shall cooperate with the self-regulatory bodies of video-sharing platform providers, including their alternative forums for dispute settlement (hereinafter referred to collectively as “self-regulatory bodies”).

(2) In the context of the cooperation referred to in Subsection (1), the Office shall have authority to conclude an administrative agreement with the self-regulatory body of good standing, that is to say established and operating in accordance with the relevant legislation (hereinafter referred to as “administrative agreement”), on cooperation for the shared handling of cases falling within the administrative competence provided for in Subsection (2) of Section 15/K together with such self-regulatory bodies, and for the joint performance of tasks not falling within the scope of administrative competence by law but nevertheless compliant with the provisions of this Act.

(3) Under administrative agreement the Office shall have power to authorise the self-regulatory body to perform self-management tasks beyond the scope of administrative powers in relation to its registered members and video-sharing platform providers which have accepted the terms of the Code of Conduct defined in Section 15/M (hereinafter referred to collectively as “business entities covered by the Code”) in official cases specified in Subsection (2) of Section 15/K within the powers conferred under the agreement, prior to specific exercise of powers of the competent authority.

(4) The authorisation granted under Subsection (3) shall not confer administrative and executive powers upon the self-regulatory body, and the self-regulatory body shall not be construed as an administrative authority nor shall it be covered by the administration system under this authorisation.

(5) The authorisation granted under the administrative agreement shall not affect the powers of the Office under this Act in relation to video-sharing platform services, the Office shall have powers to proceed in administrative cases irrespective of this authorisation.

Section 15/K to 15/V further detail the practicalities of such administrative agreements, including practicalities related to the development of codes of conduct.

On the basis of Chapter VI (Sections 190 to 202A) of the Act on Media Services and on the Mass Media, the NMHH has already reached several such administrative agreements, including with the following Hungarian Associations:



- Association of Hungarian Content Providers, ²⁴⁹
- Association of Hungarian Electronic Media Service Providers, ²⁵⁰
- Hungarian Publishers' Association²⁵¹, also
- Hungarian Advertising Standard Alliance, ²⁵².

5.16.5.5. Out-of-court redress mechanisms for users

Section 15E (3) of the Act on Electronic Commerce and on Information Society Services states that:

3) The general terms and conditions of video-sharing platform providers shall contain information for the out-of-court settlement or settlement by way of judicial process of disputes between users and the video-sharing platform provider arising out of or in connection with the application of Sections 15/F and 15/G.

5.16.5.6. Rights before a court for users

No specific provision under the Act on Electronic Commerce and on Information Society Services deals with this issue, but nothing prevents users from asserting their rights before a court of law.

5.16.6. Studies, reports and research

N/A.

5.16.7. Data compilation

This factsheet is based on data compiled by Zsuzsa Detrekői, fellow at the Center for Media, Data and Society (CMDS) of the Central European University School of Public Policy.

²⁴⁹ <http://mte.hu/in-english/>.

²⁵⁰ <https://www.memeinfo.hu/en>.

²⁵¹ <http://mle.org.hu/english/>.

²⁵² <http://www.ort.hu/en/>.



5.17.IE – Ireland – National legal summary²⁵³

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the draft General Scheme of the Online Safety and Media Regulation Bill (draft OSMR Bill).

5.17.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft General Scheme of the Online Safety and Media Regulation Bill (OSMR).²⁵⁴

5.17.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 37. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	No.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Irish response to European Audiovisual Observatory standardised survey

²⁵³ The factsheet on Ireland incorporates the feedback received from Andrew Robinson, Údarás Craolacháin na hÉireann /Broadcasting Authority of Ireland, during the checking round with the national regulatory authorities.

²⁵⁴ <https://www.gov.ie/pdf/?file=https://assets.gov.ie/126000/b174bdcd-e017-47d9-bb48-07b29671330c.pdf#page=null>.



5.17.2.1. VSP service

The draft OSMR Bill, Head 2, page 9 provides for the definition of a VSP service by transposing the wording of the revised AVMSD verbatim:

Video-sharing platform service means a media service 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 an electronic communications network 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.

5.17.2.2. VSP provider

There is no definition of the term “video-sharing platform provider” in the draft OSMR Bill.

5.17.2.3. User-generated video

The draft OSMR Bill, Head 2, page 11 provides for the definition of user-generated content (not video) and uses a similar definition of user-generated video as that provided for by the revised AVMSD:

User-generated content means content constituting an individual item, irrespective of its length, that is created by a user and uploaded to a relevant online service or media service by that user or any other user and does not include content uploaded to a relevant online service or media service by the provider of that service.

5.17.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.17.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.17.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.17.3.1. General provisions

Irish law prohibits incitement to hatred through the Incitement to Hatred Act, including the prohibition to publish and distribute such materials. The Broadcasting Act 2009 stipulates a number of provisions relative to such content, as well as the protection of minors and regulation of commercial communications. The Broadcasting Authority of Ireland regulates harmful content through their broadcasting and audiovisual regulatory work. Areas covered include: harm and offence (including e.g., hate speech); protection of minors; harmful (or potentially harmful) advertising content (e.g., HFSS, children's advertising); fairness and impartiality, etc.

The draft OSMR Bill, under Head 49A, does not propose to define harmful online content. Instead, it proposes to enumerate descriptions of categories of material that are considered to be harmful online content. The included category of "material which it is a criminal offence to disseminate" refers to a wide range of materials, including: child sexual abuse material, content containing or comprising incitement to violence or hatred, and, public provocation to commit a terrorist offence.

Head 49 (c) of the draft OSMR Bill states that "age inappropriate online content" means material which may be unsuitable for exposure to minors and that they should not normally see or hear and which may impair their development, taking into account the best interests of minors, their evolving capacities and their full array of rights. It includes: material containing or comprising gross or gratuitous violence, material containing or comprising cruelty, including mutilation and torture, towards humans or animals, and material containing or comprising pornography.

The draft OSMR Bill, under Head 49A, also proposes the inclusion of provisions related to harmful online content and that it include:

(a) material which it is a criminal offence to disseminate under Irish [or Union] law;



(b) material which is likely to have the effect of intimidating, threatening, humiliating or persecuting a person to which it pertains and which a reasonable person would conclude was the intention of its dissemination;

(c) material which is likely to encourage or promote eating disorders and which a reasonable person would conclude was the intention of its dissemination; and

(d) material which is likely to encourage or promote [self-harm or suicide] or provides instructions on how to do so and which a reasonable person would conclude was: (i) the intention of its dissemination and (ii) that the intention of its dissemination was not to form part of philosophical, medical and political discourse;

but does not include:

(a) material [containing or comprising] a defamatory statement;

(b) material that violates [data protection or privacy law];

(c) material that violates [consumer protection law]; and

(d) material that violates [copyright law].

Head 49 (c) states that “age inappropriate online content” means material which may be unsuitable for exposure to minors and that they should not normally see or hear and which may impair their development, taking into account the best interests of minors, their evolving capacities and their full array of rights, and includes:

(a) material containing or comprising gross or gratuitous violence,

(b) material containing or comprising cruelty, including mutilation and torture, towards humans or animals, and,

(c) material containing or comprising pornography.

The associated explanatory note explains that it is considered that there are a number of categories of material that may not be necessarily harmful but are likely inappropriate for a minor to be exposed to. A definition of inappropriate online content is included in this head on that basis to facilitate the regulator issuing online safety guidance materials, as provided for in Head 51, in relation to content rating and age-gating.

5.17.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services in respecting the related obligations, Head 50 A of the draft OSMR Bill stipulates that the proposed Media Commission shall have the responsibility in relation to these measures.



5.17.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Head 50 A of the draft OSMR Bill stipulates that the proposed Media Commission shall have the responsibility in relation to these measures.

5.17.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Head 50 A of the draft OSMR Bill stipulates that the proposed Media Commission shall have the responsibility in relation to these measures.

5.17.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of VSP to report or flag the content to the VSP provider, Head 50 A of the draft OSMR Bill stipulates that the proposed Media Commission shall have the responsibility in relation to these measures.

5.17.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Head 50 A of the draft OSMR Bill stipulates that the proposed Media Commission shall have the responsibility in relation to these measures.



5.17.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Head 50 A of the draft OSMR Bill stipulates that the proposed Media Commission shall have the responsibility in relation to these measures.

5.17.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Head 50 A of the draft OSMR Bill stipulates that the proposed Media Commission shall have the responsibility in relation to these measures.

5.17.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Head 50 A of the draft OSMR Bill stipulates that the proposed Media Commission shall have the responsibility in relation to these measures.

5.17.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Head 50 A of the draft OSMR Bill stipulates that the proposed Media Commission shall have the responsibility in relation to these measures.

5.17.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, the Broadcasting Act 2009



(section 2 (1)) provides for the definition of media literacy, while 26 (2)(g) lists in the functions of the Broadcasting Authority of Ireland:

to undertake, encourage and foster research, measures and activities which are directed towards the promotion of media literacy, including co-operation with broadcasters, educationalists and other relevant persons.

Section 154 (1)(b) of the Broadcasting Act 2009 allows for the Broadcasting Authority of Ireland to prepare and submit to the minister for his or her approval a scheme for the granting of funds to support new television or sound broadcasting programmes to improve adult or media literacy. A similar provision is included in Head 77 (1)(b) of the draft OSMR Bill.

The draft OSMR Bill, in Head 10 (1) (xiii)(b) provides that the proposed Media Commission has the following functions:

To promote public awareness, encourage research and conduct public information campaigns for the purpose of educating and providing information to the public in relation to:

- (a) online safety;*
- (b) media literacy.*

5.17.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

The categories of data protection and privacy law are dealt with by other areas of law and existing regulatory bodies, such as the Data Protection Commission.

5.17.3.13. Other relevant provisions related to the protection of minors

The Broadcasting Act 2009, section 25 (2)(f) stipulates that the Broadcasting Authority of Ireland shall protect the interests of children taking into account the vulnerability of children and childhood to undue commercial exploitation, by preparing codes governing standards and practice. Section 42 (2) (f) states that in respect of programme material broadcast by a broadcaster that audiences are protected from harmful or offensive material, in particular, that programme material in respect of the portrayal of violence and sexual conduct, shall be presented by a broadcaster (ii) with due regard to the impact of such programming on the physical, mental or moral development of children.



5.17.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Section 42 (2)(g) of the Broadcasting Act 2009 states that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, protect the interests of children having particular regard to the general public health interests of children.

5.17.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

Section 42 (4) of the Broadcasting Act 2009 states that a broadcasting code prepared by the Broadcasting Authority of Ireland under subsection (2)(g) may prohibit the advertising in a broadcasting service of a particular class or classes of foods and beverages considered by the Authority to be the subject of public concern in respect of the general public health interests of children, in particular those which contain fat, trans-fatty acids, salts or sugars. The Children's Commercial Communications Code, developed by the Broadcasting Authority of Ireland in accordance with these statutory obligations, defines HFSS foods as those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the Broadcasting Authority of Ireland. It also contains several other provisions related to this.

Relative to advertising of alcohol, the Code of Programme Standards of the Broadcasting Authority of Ireland, in Principle 3 (Protection from Harm), states that broadcasters shall:

Take due care when broadcasting programme material containing characters, actions and personal circumstances with which audiences may identify and which can cause distress, particularly in relation to content such as sexual violence, self-harm or suicide, reconstructions of factual events and archive footage. Programme material of this nature shall be accompanied by some form of audience information or guidance, such as prior warnings and help line contact details.

Not encourage or favourably present the abuse of drugs, alcohol, or solvents or the use of illegal drugs. Depictions and/or descriptions of detailed methods and techniques for administering illegal drugs must have strong editorial justification for their inclusion.

Principle 4 (Protection of Children) requires that children are not exposed to programming that would seriously impair their moral, mental and physical development, in particular, programmes involving pornography or gratuitous violence. In fulfilment of this principle, broadcasters shall:



Ensure that programme material that might seriously impair the physical, mental or moral development of children is not broadcast when children are likely to be viewing, in particular, programmes that include pornography or gratuitous violence.

5.17.3.16. Other relevant information

N/A.

5.17.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

The measures are not implementable at present, but the draft OSMR Bill implies that the proposed Media Commission shall have responsibilities in relation to these measures. It should be noted that Head 50A (3)(d) specifically refers to “the nature and scale of designated online services or categories thereof”.

5.17.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as to the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.17.5.1. Regulatory body

There is currently no body with regulatory or enforcement powers with regard to VSPs in Ireland. However, the draft OSMR Bill provides for the establishment of a Media



Commission as a statutory body (Head 6) which would have responsibilities in relation to VSPs (Head 1). This will lead to the dissolution of the current Broadcasting Authority of Ireland.

5.17.5.2. Existence of a registration/notification system

No specific provision of the draft OSMR Bill deals with this issue, as these matters will be subject to rules of the proposed Media Commission. However, it is worth noting that Head 56 (1) of the proposed legislation allows for the designation of relevant online services, while 56 (3) stipulates that VSP services shall be a category of designated online services.

5.17.5.3. Compliance, enforcement and sanctioning powers

No specific provision of the draft OSMR Bill deals with this issue, as these matters will be subject to rules of the proposed Media Commission. However, it is worth noting that Head 53 of the proposed legislation shall introduce compliance and warning notices for designated services, while Head 54A introduces sanctions for non-compliance for services that the Commission view as failing to comply with a warning notice as per Head 53.

5.17.5.4. Development of self- or co-regulatory codes or schemes

According to the 2010 AVMS Directive, on-demand services in Ireland are currently subject to a co-regulatory Code of Conduct, of established body ODAS (the On-Demand Audiovisual Services Group) which was responsible for the development of a Code of Conduct for on-demand services. This grouping, under the auspices of the Irish Business and Employers Confederation (IBEC) comprises the Advertisers Association of Ireland, the Institute of Advertising Practitioners in Ireland, the Advertising Standards Authority for Ireland, and a representative group of broadcasters, telecommunication companies and other service providers.

ODAS published its Code of Conduct for on-demand services in 2011, setting out the obligations of on-demand services, including rules concerning notification, protection of minors, accessibility, audiovisual commercial communications, sponsorship, product placement and European Works.

The Broadcasting Authority of Ireland has a statutory responsibility for the approval of any codes of conduct developed by ODAS; it also provides an appeal mechanism where a complainant is dissatisfied with a complaint resolution offered by a service provider in respect of the protection of minors and community standards.

Head 29 (1) of the draft OSMR Bill provides that “[t]he Commission, in the interests of the effective discharge of its functions, may enter into co-operation agreements with other bodies as it sees fit”.



5.17.5.5. Out-of-court redress mechanisms for users

No specific provision of the draft OSMR Bill deals with this issue. It is, however, anticipated that these mechanisms will be addressed in the forthcoming legislation as implied in Head 10 and Head 54 of the draft OSMR Bill.

5.17.5.6. Rights before a court for users

No specific provision of the draft OSMR Bill deals with this issue, but nothing prevents users from asserting their rights before a court.

5.17.6. Studies, reports and research

N/A.

5.17.7. Data compilation

This factsheet is based on data compiled by Martina Chapman, independent consultant and the director of independent consultancy Mercury Insights.



5.18.IT – Italy – National legal summary²⁵⁵

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed in the related AVMS Code.

5.18.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation²⁵⁶:

- Legislative Decree 177/2005, AVMS Code (*Testo Unico dei Servizi di Media Audiovisivi e Radiofonici*)²⁵⁷
- Law Decree 28/2020, passed into Law 70/2020 (*Misure urgenti per la funzionalità dei sistemi di intercettazioni di conversazioni e comunicazioni, ulteriori misure urgenti in materia di ordinamento penitenziario, nonché disposizioni integrative e di coordinamento in materia di giustizia civile, amministrativa e contabile e misure urgenti per l'introduzione del sistema di allerta Covid-19*)²⁵⁸
- Law 71/2017 (*Disposizioni a tutela dei minori per la prevenzione ed il contrasto del fenomeno del cyberbullismo*)²⁵⁹
- European Delegation Law 53/2021 (*Legge di delegazione europea*)²⁶⁰

Secondary legislation:

- AGCOM (*Autorità per le Garanzie nelle Comunicazioni*: Italian Communications Authority) Resolution no. 157/19 (*Delibera AGCOM 157/19*), containing provisions relating to the respect for human dignity and the principle of non-discrimination and to counteract hate speech ('on hate speech')²⁶¹

²⁵⁵ The factsheet on Italy incorporates feedback received from AGCOM (*Autorità per le garanzie nelle comunicazioni*), during the checking round with the national regulatory authorities.

²⁵⁶ It should be noted that, at the time of writing this report, Italy was still in the process of implementing the amendments to the AVMS Directive introduced by the revised AVMSD. Accordingly, the definition of a VSP and the relevant measures will be provided by this law.

²⁵⁷ <https://bit.ly/31TzX4j>.

²⁵⁸ <https://bit.ly/37POOkf>.

²⁵⁹ <https://bit.ly/2YiwcDX>.

²⁶⁰ <https://bit.ly/3hZizE5>.

²⁶¹ <https://www.agcom.it/documents/10179/13511391/Allegato+23-5-2019+1558628852738/5908b34f-8c29-463c-a7b5-7912869ab367?version=1.0>. While this Resolution contains some definitions and procedures which apply also to the VSPs (in the form of *moral suasion*, as they cannot be enforced due to lack of sanctions and jurisdiction), the primary legislation transposing the AVMS, which is in the process of being adopted at the time



- AGCOM Resolution no. 74/19, (*Delibera AGCOM 74/19*), containing content rating system for audiovisual works intended for the web and videogames²⁶²

5.18.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 38. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	No.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Italian response to European Audiovisual Observatory standardised survey

5.18.2.1. VSP service

Article 1(h), Exhibit B of AGCOM Resolution 157/19/CONS on hate speech provides for the definition of VSP service by transposing the wording of the revised AVMSD verbatim:

“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.

of writing this report, might overrule the AGCOM Regulation’s provisions, with provisions relative to the definitions and measures imposed on the VSPs.

²⁶² <https://bit.ly/2EcMDKV>.



5.18.2.2. VSP provider

While the adoption of the relevant legislation is pending, Article 1(g), Exhibit B of AGCOM Resolution 157/19/CONS on hate speech provides for the definition of VSP provider by transposing the revised AVMSD verbatim: “Video-sharing platform provider’ means the natural or legal person who provides a video-sharing platform service”.

5.18.2.3. User-generated video

The adoption of the relevant legislation is pending.

5.18.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.18.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.18.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides other additional relevant information about the measures and concepts at stake.



5.18.3.1. General provisions

With regard to content inciting violence and hatred, the wording is likely to be interpreted in light of relevant Criminal Code provisions (e.g., Article 604-bis of the Italian Criminal Code, which criminalises incitement to commit crimes for racial, ethnic and religious reasons, i.e. hate speech).

5.18.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Article 7-bis of Law Decree 28/2020, passed into Law 70/2020, states that agreements for the provision of electronic communication services must include as pre-activated services the adoption of parental control measures or measures for the filtering of inappropriate content for minors and the blocking of content for adults only. Such services are provided free of charge and can be disabled at any time upon request of the subscriber to the agreement. Electronic communication service providers must adopt measures to promote consumers' awareness of these services and to allow them to take properly informed decisions.

5.18.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

The adoption of the relevant legislation is pending.

5.18.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

The adoption of the relevant legislation is pending.

5.18.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag the content to the VSP provider, Article 9(3), Exhibit B of AGCOM Resolution 157/19/CONS on hate speech obliges VSP providers to submit to the Italian Communications Authority AGCOM a quarterly report on the monitoring activities carried out for detecting items of content constituting hate speech, including a description of the operating methods and verification systems implemented.



- 5.18.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

N/A.

- 5.18.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Article 7-bis of Law Decree 28/2020, passed into Law 70/2020, stipulates that the agreements for the provision of electronic communication services must include as pre-activated services the adoption of parental control measures or measures for the filtering of inappropriate content for minors and the blocking of content for adults only. Such services are provided free of charge and can be disabled at any time upon request of the subscriber to the agreement. Electronic communication service providers must adopt measures to promote consumers' awareness of these services and to allow them to take properly informed decisions.

Article 10, Exhibit A of AGCOM Resolution 74/19/CONS, establishing a rating system for audiovisual works intended for the web and videogames, and guidelines adopted require operators providing audiovisual media services via the Internet as well as hosting providers to take the appropriate technical measures to restrict or prevent the circulation of content in accordance with the categorisation thereof. Such measures include, among others: technical identification devices suitable for recognition by parental control mechanisms; technical devices creating barriers to entry; time restrictions on the transmission of content; implementation of security software; age verification systems.

- 5.18.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

N/A.

- 5.18.3.9. 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 – Article 28b (3) (h) AVMSD

Article 7-bis of Law Decree 28/2020, passed into Law 70/2020, stipulates that agreements for the provision of electronic communication services must include as pre-activated services the adoption of parental control measures or measures for the filtering of inappropriate content for minors and the blocking of content for adults only. Such services are provided free of charge and can be disabled at any time upon request of the subscriber



to the agreement. Electronic communication service providers adopt measures to promote consumers' awareness of these services and to allow them to take properly informed decisions.

Article 10, Exhibit A of AGCOM Resolution 74/19/CONS, establishing a rating system for audiovisual works intended for the web and videogames, and guidelines adopted require operators providing audiovisual media services via electronic communication services as well as hosting providers to take the appropriate technical measures to restrict or prevent the circulation of content in accordance with the categorisation thereof. Such measures include, among others: technical identification devices suitable for recognition by parental control mechanisms; technical devices creating barriers to entry; time restrictions on the transmission of content; implementation of security software; age verification systems.

5.18.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Article 3(1)(c) of Law 53/2021 provides that the implementing provisions of Directive (EU) 2018/1808 shall include measures to protect consumers, including by making available out-of-court dispute resolution mechanisms and redress measures. However, this provision only refers to linear and non-linear audiovisual media services, whereas it does not mention VSPs.

5.18.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Art. 9(3), Exhibit B of AGCOM Resolution 157/19/CONS on hate speech states that VSP providers are invited to promote campaigns and initiatives on issues of social inclusion and cohesion, as well as the promotion of diversity and fundamental human rights, with a view to preventing and countering online discrimination.

5.18.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

N/A.



5.18.3.13. Other relevant provisions related to the protection of minors

Articles 34 (1) and 34 (3) of Legislative Decree 177/2005 (AVMS Code) deal with the broadcasting of programmes which might seriously impair the physical, mental or moral development of minors.

AGCOM Resolutions 52/13/CSP and 51/13/CSP set out, respectively, the criteria for the classification of programmes which might seriously impair the physical, mental or moral development of minors, and the technical measures to be taken to preclude minors from seeing or hearing programmes made available by on-demand media service providers which might seriously impair their physical, mental or moral development. Also, AGCOM Resolution 74/19/CONS establishes the criteria to categorise audiovisual works delivered via the web in order to protect minors from inappropriate content.

Law 71/2017 against cyberbullying stipulates that minors aged between 14 and 18 as well as the parents of or persons having parental rights over minors who have suffered from acts defined as cyberbullying are entitled to submit a complaint to the owners of websites and social media to block and remove any personal data circulated over the Internet (even if these acts constitute the crime of illegal processing of personal data under Italian Law). In the event that the requested party fails to take the complaint into account within 24 hours and to take the necessary measures within 48 hours, the party which submitted the complaint is entitled to file a similar request with the Data Protection Authority, which shall adopt any necessary measures within the following 48 hours.

5.18.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 36-bis (1) of the AVMS Code regulates restrictions on commercial communications related to the protection of minors and prohibits audiovisual commercial communications for alcoholic beverages aimed specifically at minors, or that may be detrimental to the physical or moral development of minors, etc.

5.18.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications:

Article 36-bis (2) of the AVMS Code provides that the Ministry of Economic Development, in agreement with AGCOM and the Ministry of Health, encourages media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications accompanying or included in programmes aimed at children, regarding alcoholic beverages and HFSS food.



5.18.3.16. Other relevant information

N/A.

5.18.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content. This section aims at identifying how this is implemented in the national legislation.

5.18.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.18.5.1. Regulatory body

There is currently no body with regulatory or enforcement powers with regards to VSPs in Italy, but it is reasonable to expect that it will be the Italian Communications Authority AGCOM.²⁶³

5.18.5.2. Existence of a registration/notification system

N/A.

²⁶³ <https://www.agcom.it>.



5.18.5.3. Compliance, enforcement and sanctioning powers

Article 3(1)(m) and (n) of Law 53/2021 provide that the implementing provisions of Directive (EU) 2018/1808 shall include measures that, on one hand, revisit and update the competences and powers vested in AGCOM and, on the other, amend the administrative sanctions provided by the AVMS Code in accordance with the new obligations established by Directive (EU) 2018/1808 based on the principles of proportionality, reasonableness and effectiveness.

5.18.5.4. Development of self- or co-regulatory codes or schemes

The self-regulatory code of conduct on “Media and minors” from 2002 establishes in detail rules of conduct for broadcasters with a view to ensuring a high level of protection of minors.

5.18.5.5. Out-of-court redress mechanisms for users

Article 3(1)(c) of Law 53/2021 provides that the implementing provisions of Directive (EU) 2018/1808 shall include measures to protect consumers, including by making available out-of-court dispute resolution mechanisms and redress measures. However, this provision only refers to linear and non-linear audiovisual media services, whereas it does not mention VSPs.

5.18.5.6. Rights before a court for users

No specific provision of the draft laws deals with this issue, but nothing prevents users from asserting their rights before a court.

5.18.6. Studies, reports and research

- AGCOM study: Audizione del presidente dell'autorità per le garanzie nelle comunicazioni Angelo Marcello Cardani – Esame del disegno di delegazione europea, 2020 – Hearing of the President of the Italian Communications Authority, Mr. Angelo Marcello Cardani – Examination of the Bill containing ‘European Law’.²⁶⁴
- Confindustria Radio Televisioni, Legge delegazione europea 2019 (AS 1721). Prime osservazioni Confindustria Radio Televisioni Senato – XIV Commissione (Politiche dell’Unione Europea), 2020 – European Law 2019 (Bill 1721). First observations by

²⁶⁴ <https://bit.ly/31eZDbW>.



Confindustria Radio Televisioni – Senate of the Republic, XIV Committee (European Affairs), 2020.²⁶⁵

- ANICA - Associazione Nazionale Industrie Cinematografiche Audiovisive e Multimediali, LEGGE DI DELEGAZIONE EUROPEA N. 1721 DIRETTIVE OGGETTO DI OSSERVAZIONI, 2020 – Bill for European Law no. 1721 – Notes on the relevant directives, 2020.²⁶⁶
- I-COM, AVMSD Refit or Reform? Audio Visual Media Services in the Digital Era, 2016.²⁶⁷

5.18.7. Data compilation

This factsheet is based on data compiled by Ernesto Apa, Partner and Filippo Frigerio, Associate in the law firm Portolano Cavallo.

²⁶⁵ <https://bit.ly/3iZ5x6K>.

²⁶⁶ <https://bit.ly/34ozWau>.

²⁶⁷ <https://bit.ly/2Eo4OVv> .



5.19.LT – Lithuania – National legal summary²⁶⁸

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the Amendments to the Law on the Provision of Public Information (draft Public Information Law), the Law on the Protection of Minors against the Detrimental Effect of Public Information (Protection of Minors Law) and the Code of Administrative Offences, all adopted by the national parliament in January 2021.

5.19.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Amendments to the Public Information Law (*VISUOMENĖS INFORMAVIMO ĮSTATYMAS*).²⁶⁹
- Amendments to the Law on the Protection of Minors against the Detrimental Effect of Public Information (*NEPILNAMEČIŲ APSAUGOS NUO NEIGIAMO VIEŠOSIOS INFORMACIJOS POVEIKIO ĮSTATYMAS*).²⁷⁰
- Amendments to the Code of Administrative Offences (*ADMINISTRACINIŲ NUSIŽENGIMŲ KODEKSAS*).²⁷¹

5.19.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

²⁶⁸ The factsheet on Lithuania incorporates feedback received from Nerijus Maliukevičius, Market research analyst at the Radio and Television Commission of Lithuania., during the checking round with the national regulatory authorities.

²⁶⁹ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.29884/asr>

²⁷⁰ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.183129/asr?positionInSearchResults=0&searchModelUUID=6a558f8a-1062-4b61-b8b5-de3c5abd3674>

²⁷¹ <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b8d908c0215b11e58a4198cd62929b7a?ifwid=-a3k5birpg>.



Table 39. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes
VSP provider	Yes
User-generated video	Yes
“Principal purpose”	No
“Dissociable section”	No
“Essential functionality”	No

Source: Lithuanian response to European Audiovisual Observatory standardised survey

5.19.2.1. VSP service

Article 2 (15) of the draft Public Information Law defines the term “video-sharing platform service” by transposing the definition provided by the revised AVMSD verbatim, as follows:

15. Video-sharing platform service means a service where the main purpose or one of the essential functions of the service, or part of it, is to provide programmes and/or user-generated videos to the public for information, entertainment or educational purposes, without the editorial responsibility of the service provider, via electronic communications networks and organised by the video-sharing platform provider, including by automated means or algorithms, in particular displaying, tagging and sequencing, as well as other means.

5.19.2.2. VSP provider

Article 2 (16) of the draft Public Information Law defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “Video-sharing platform service provider means a person who provides a video-sharing platform service.”

5.19.2.3. User-generated video

Article 2 (39) of the draft Public Information Law defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:

User-generated video means a set of moving images, with or without sound, of any duration, forming a separate user-generated unit uploaded by that or another user to a video-sharing platform.



5.19.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.19.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.19.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.19.3.1. General provisions

The definition of content inciting to violence or hatred provided by the Public Information Law from 1996/2019 remained the same in the 2021 draft, but there is a proposal to change the definition and differentiate content inciting to violence from other types of harmful information and to include references to terrorist information in the following manner:

Article 19

1. It shall be prohibited to publish in the media information if:

- 1) disinformation is disseminated, war propaganda is incited, war is incited, and the sovereignty of the Republic of Lithuania is forcibly violated - to change its constitutional order, encroach on its independence or violate the integrity of the territory;*
- 2) encouraging or inciting terrorist offences;*
- 3) spreading or inciting hatred, bullying, contempt, inciting discrimination, violence, physically dealing with a group of people or a person belonging to it on the grounds of*



age, gender, sexual orientation, ethnicity, race, nationality, citizenship, language, origin, social status, disability, on the grounds of religion, belief, opinion or religion;

4) dissemination, promotion or advertising of pornography, as well as promotion and/or promotion of sexual services, sexual perversion;

5) promoting and/or advertising the use of narcotic drugs, psychotropic substances and/or other psychologically addictive substances, as well as psychological dependence on gambling.

2. Dissemination of information that defames, insults, degrades the person's honour and dignity is prohibited.

Article 2

70. Information which promotes or incites terrorist offences means information which directly or indirectly promotes or incites the commission of terrorist offences, including information glorifying or justifying such offences, denigrating their victims, disseminating their images in order to secure support for terrorist behaviour or severe intimidation.

The draft Public Information Law, in Chapter 3, dedicated to VSP regulation, underlines the obligation to protect minors from harmful content which is disseminated by VSPs and which has a negative impact on their physical health and on their physical, intellectual or moral development:

Article 40⁴:

1. Video-sharing platform providers must:

- 1) take the measures provided for in Paragraph 2 of this Article and the Law on the Protection of Minors against the Detrimental Effect of Public Information in order to protect minors from programmes, user-generated videos and audiovisual commercial communications that disseminate information adversely affecting minors;*
- 2) take the measures specified in Paragraph 2 of this Article in order to protect the public from programmes, user-created videos and audiovisual commercial communications in which the information specified in items 1–4 of Paragraph 1 of Article 19 of this Law is disseminated;*
- 3) comply with the requirements of Article 39 of this Law regarding audiovisual commercial communications ordered by the service providers of the video-sharing platform themselves or disseminate on their own initiative, as well as take appropriate measures related to compliance with this Article regarding audiovisual commercial communications video-sharing platform providers do not trade, sell or manage;*
- 4) clearly inform users of programmes and user-generated videos of audiovisual commercial communications in those programmes and videos when they have been declared in accordance with paragraph 2 (3) of this Article or the video-sharing platform provider is aware of such communications;*



- 5) *comply with a code of conduct (ethics) adopted by themselves or other video-sharing platform providers regarding inappropriate audiovisual commercial communications for children, or included in such programmes, about foods and beverages that contain nutrients and substances with a physiological effect, in particular fats, trans fatty acids, salt or sodium and sugar, which are recommended in moderation. These codes of conduct (ethics) should aim to effectively reduce children's access to audiovisual commercial communications for specified foods and beverages by ensuring that audiovisual commercial communications do not emphasise the positive nutritional properties of those foods and beverages. Codes of conduct (ethics) shall be adopted in accordance with the procedure established in Paragraph 4 of Article 43 of this Law.*

5.19.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services in respecting the obligations stemming from the aforementioned general requirements, Article 40⁴.2. 1) of the draft Public Information Law stipulates the possibility for VSP providers to opt for measures in terms of the inclusion and application of terms and conditions, as stipulated by the AVMSD:

2. Video-sharing platform service providers shall optionally apply the following measures:

- 1) include in the conditions for the provision of video-sharing platform services the requirements specified in Paragraph 1, Item 1 or 2 of this Article and apply them;*

5.19.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 40⁴.2. 2) of the draft Public Information Law includes the following in the conditions for the provision of VSP services from the requirements of Article 39 of the law:

- 2) include in the conditions for the provision of video-sharing platform services the requirements of Article 39 of this Law applicable to audiovisual commercial communications which are not traded, sold or processed by video-sharing platform service providers and apply them.*



5.19.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 40⁴.2. 3) of the draft Public Information Law provides for a function for users uploading user-generated videos which allows them to declare to what extent they know or can reasonably be expected to know whether such videos contain commercial audiovisual messages:

3) has a function for users uploading user-generated videos, which allows them to declare to what extent they know or can reasonably be expected to know whether such videos contain audiovisual commercial communications.

5.19.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the general provisions, the draft Public Information Law, in Article 40⁴.2. 4) establishes these obligations by transposing the text of the revised AVMSD verbatim, in the following manner:

4) establish and maintain transparent and easy-to-use mechanisms for video-sharing platform users to notify and flag the content referred to in points (1) or (2) of paragraph 1 of this Article that is available on their platform.

5.19.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 40⁴.2. 5) of the draft Public Information Law states the obligation, without further specifications:

5) establish and apply systems by means of which video-sharing platform service providers explain to video-sharing platform users the result of the notification and its certificate referred to in Paragraph 2 (4) of this Article.



5.19.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, in the draft Public Information Law, Article 40⁴.2. 6) stipulates the obligation to develop and apply age verification systems for users of VSPs with regard to information (content) that has a negative impact on minors:

6) develop and apply age verification systems for users of video-sharing platforms regarding information (content) that has a negative impact on minors.

5.19.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 40⁴.2. 7) of the draft Public Information Law stipulates these obligations, without further specifications:

7) develop and apply easy-to-use systems that allow users of video-sharing platforms to rate the content referred to in Paragraph 1, Item 1 or 2 of this Article.

5.19.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 40⁴.2. 8) of the draft Public Information Law provides for these obligations, in order to provide for end-user-controlled parental control systems for information (content) that has a negative impact on minors:

8) provide for end-user-controlled parental control systems regarding information (content) that has a negative impact on minors.

5.19.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in 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, the draft



Public Information Law, in Article 40⁴.2. 9), establishes these obligations, without further specifications:

9) establish and apply transparent, easy-to-use and effective procedures for the handling and resolution of user complaints submitted to the video-sharing platform service provider regarding the implementation of the requirements specified in items 4–8 of this Part.

5.19.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 40⁴.2. 10) of the recently amended Public Information Law establishes these obligations, without further specifications:

10) provide effective tools and instruments for the ability to use the media and increase the awareness of users about these tools and instruments.

5.19.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, the draft Public Information Law only refers to the obligations of VSP providers to comply with the Law on the Protection of Minors against the Detrimental Effect of Public Information:

Article 40⁴.6: Where an audiovisual media service provider provides its services through a video-sharing platform service, the measures implemented by the video-sharing platform service provider shall not remove the requirements applicable to the audiovisual media service provider set out in this Law and the Law on the Protection of Minors from Adverse Public Information.

Article 8 of the 2021 Amendment to the Law on the Protection of Minors against the Detrimental Effect of Public Information stipulates that the dissemination of other public information must be subject to the restrictions of this law (from Article 7), is to be observed. Article 8.4 stipulates:

Personal data of minors collected or otherwise obtained by producers and/or disseminators of public information in accordance with Paragraph 1 of Article 7 of this Law may not be processed for direct marketing, profiling and advertising based on consumer behaviour, as well as for other commercial purposes.



5.19.3.13. Other relevant provisions related to the protection of minors

N/A.

5.19.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 8 of the Protection of Minors Law provides for legal obligations with regard to the protection of minors against commercials, with more specific details about the obligations:

1. The restrictions, exceptions and prohibitions on public information which adversely affect the development of minors shall apply to all public information, including advertising, audiovisual commercial communications, announcements, trademarks, user-generated videos and public events.

2. The advertising of goods and/or services intended for persons from 18 years of age, 14 years of age and 7 years of age, via audiovisual commercial communications may not be disseminated together with information intended for consumers younger than the age stipulated for the delivered and advertised goods and/or services.

3. Advertising and audiovisual commercial communications shall also comply with the following requirements:

- 1) they must not directly encourage minors to buy or rent or choose a product or service using the inexperience and trustworthiness of minors;*
- 2) they must not directly encourage minors to persuade their parents or other persons to purchase the advertised goods or services;*
- 3) they must not form the opinion of minors that the use of certain services or goods will give them a physical, psychological or social advantage over their peers;*
- 4) they must not use the trust of minors in their parents, teachers or other persons;*
- 5) they shall not show minors who have found themselves in dangerous situations where there is no public interest.*

5.19.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

Article 4 (1) of the Law on the Protection of Minors of 2009 only mentions alcohol and tobacco products, as well as narcotic substances, which are prohibited by law due to the detrimental effect on minors:

1. Public information which has a detrimental effect on minors shall be considered such information which may be detrimental to the mental or physical health of minors, their physical, intellectual, mental or moral development.



...

7) in which dependence on narcotic, toxic, psychotropic substances, tobacco or alcohol as well as other substances which are used or may be used for intoxication purposes are positively assessed and the use, production, distribution or acquisition thereof is promoted.

The draft Public Information Law refers to alcohol and HFSS products in Article 40^{4.1}:

Video-sharing platform service providers are obliged to:

...

5) comply with a code of conduct (ethics) adopted by themselves or other video-sharing platform providers regarding inappropriate audiovisual commercial communications that are inserted or included in children's programmes about foods and beverages that contain nutrients or substances with a physiological effect, in particular fats, trans fatty acids, salt or sodium and sugar, which are recommended to use in moderation. These codes of conduct (ethics) must aim to effectively reduce children's access to audiovisual commercial communications for specified foods and beverages by ensuring that audiovisual commercial communications do not emphasise the positive nutritional properties of those foods and beverages. Codes of conduct (ethics) shall be adopted in accordance with the procedure established in Article 43 (4) of this Law.

5.19.3.16. Other relevant information

N/A.

5.19.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

Chapter 3, Article 40^{4.3} of the draft Public Information Law stipulates:

3. Video-sharing platform providers shall, in pursuit of the objectives set out in paragraph 1, choose the measures provided for in paragraph 2, taking into account the nature of the content of the video-sharing platform providers, the harm it may cause and the specific category of persons whose related rights and legitimate interests to be protected, including the rights and legitimate interests of video-sharing platform providers and users who have created or uploaded content, as well as the public interest. These measures shall be



appropriate and proportionate to the scope of the video-sharing platform service and the nature of the service provided. Such measures shall not require the imposition of any ex-ante control measures or the filtering of uploaded content that does not comply with Article 15 of Directive 2000/31/EC. In order to protect minors, the most harmful content must be subject to the strictest measures to control access to information.

5.19.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.19.5.1. Regulatory body

The competent regulatory body is the Radio and Television Commission of Lithuania (RTCL).²⁷²

5.19.5.2. Existence of a registration/notification system

Article 24 of the draft Public Information Law includes provisions related to RTCL's mandate relative to VSPs, in addition to the mandate stemming from the 2018 Law on Copyright and Related Rights (2018), related to RTCL's mandate to enforce copyright protection on the Internet.

The main competencies and functions of the RTCL in relation to VSPs are found in Article 48 of the draft Public Information Law and include:

6) to establish the procedure for registration of the notification of service providers of on-demand audiovisual media services and video-sharing platform services;

7) to supervise how broadcasters, rebroadcasters, other persons providing television programmes and/or individual programmes on Internet distribution services to consumers of the Republic of Lithuania comply with the rules of licensing of broadcasting activities and retransmitted content, the provisions of this and other laws on retransmission; selection,

²⁷² <http://www.rtk.lt>.



provision and dissemination of radio and/or television programmes or individual programmes distributed on the Internet, other legal requirements regarding the content and dissemination of public information, rules adopted by the Commission on the compilation and decisions of television programmes and licensing conditions, and monitoring of retransmitted audiovisual works, radio and/or television programmes;

8) to approve the rules regarding the compilation of television programme packages by broadcasters and other persons providing television programmes and/or individual programmes for the distribution of television programmes and/or individual programmes to consumers of the Republic of Lithuania and establish requirements for retransmitters and other persons providing television programmes and/or individual programmes, for the selection, dissemination and public dissemination activities of the programmes, and shall monitor compliance with these requirements;

9) to supervise the compliance of radio and/or television programme broadcasters, rebroadcasters, other persons providing television programmes and/or individual programmes with Internet distribution services, on-demand audiovisual media services, video-sharing platform service providers to the users of the Republic of Lithuania; protection against the adverse effects of public information on laws, commitments, licences, permit conditions and Commission decisions;

10) in accordance with the procedure established by the Commission, to investigate consumer complaints regarding activities by radio and/or television broadcasters, on-demand audiovisual media service providers, as well as other persons providing video-sharing platform services to consumers who distribute television programmes and/or individual programmes on the Internet.

5.19.5.3. Compliance, enforcement and sanctioning powers

Article 25 (1) of the draft Public Information Law provides RTCL, just like for other media service providers, powers to:

11) upon receipt of a reasoned request on the grounds specified in Paragraph 5 or 6 of Article 19 of this Law, a police report on the grounds specified in Article 19 (9) (3) of this Law or an investigation, or in the cases specified in Article 50 (1) 4, 7, 8) the conclusion of the inspector, or in accordance with the conclusions of the experts, in accordance with the procedure and terms established by this Law, to make a decision regarding the application of objectively necessary sanctions established in this Law;

12) [...] to supervise the implementation of the provisions of the Law on the Protection of Minors against the Detrimental Effect of Public Information;

13) to establish the procedure for the implementation of the requirements of laws and legal acts of the European Union concerning the structure and content of radio and/or television



programmes, audiovisual commercial communications and advertising broadcasting, support for audiovisual media services, radio programmes and individual programmes in radio and/or television programmes, adopt other implementing legal acts in accordance with its competence regarding the implementation of the provisions of this and other laws;

14) to monitor the compliance [...] on the scope of European works and works produced by independent producers [...], the right to broadcast programmes on events of public importance, the requirements of this Law on television advertising and commercial audiovisual communications, support for audiovisual media services, radio programmes and individual programmes, product placement;

15) to submit proposals regarding the laws [...] and preparation of other draft legal acts related to these activities;

16) to apply to the Vilnius Regional Administrative Court regarding the termination of illegal broadcasting, on-demand audiovisual media services, provision of video-sharing platform services, distribution of television programmes and/or individual programmes on the Internet, illegal retransmission of radio and/or television programmes;

17) in accordance with the procedure established by this Law, impede the provision of services prepared by audiovisual media service providers of foreign states in the territory of the Republic of Lithuania;

18) to collect relevant information [...], analyse their activities, prepare information and methodological material on these issues.

5.19.5.4. Development of self- or co-regulatory codes or schemes

Self-regulatory measures provided in the draft Public Information Law, Article 43, indicate the Public Information Code of Ethics which has been developed by the Public Information Ethics Association (last updated in 2016), as well as other codes of conduct, both national and international. VSP service providers can also develop their own codes of conduct. The law provides the main requirements for the chosen code of conduct. It is obligatory for each service provider to choose and publish what kind of code of conduct is applied in practice; it is mandatory to comply with the norms of the chosen code:

4. In order to promote self-regulation in the provision of audiovisual media services, Lithuania may apply codes of conduct (ethics) at the national and/or European Union level, which are prepared and published on their website by audiovisual media service providers, video-sharing platform providers or their representative organisations, in cooperation with industry, commerce or other sectors, professional and consumer associations or organisations as appropriate. If the European Union codes of conduct (ethics) are prepared by audiovisual media service providers, video-sharing platform service providers or



organisations representing them under the jurisdiction of the Republic of Lithuania, they shall submit drafts of these codes and their amendments to the European Commission.

5. The codes of conduct (ethics) at national level referred to in paragraph 4 shall comply with the following requirements:

- 1) be widely recognised - they should have been adopted by more than half of the public information producers, disseminators and journalists of the Republic of Lithuania in the respective field or organisations uniting them;*
- 2) set out their objectives clearly and unambiguously;*
- 3) provide for regular, transparent and independent monitoring and evaluation of the achievement of their objectives;*
- 4) provide for effective enforcement of the provisions of the codes, including effective and proportionate sanctions.*

6. Audiovisual media service providers, video-sharing platform providers shall voluntarily choose the codes referred to in paragraph 4 and shall make their activities public in accordance with those codes by informing the Commission. Providers who have voluntarily opted for codes of conduct and have declared that their activities comply with the chosen code of conduct are bound by the provisions of the declared code.

The Public Information Code of Ethics from 2016 covers the main functions, rights, duties and responsibilities of content providers in print, online and in broadcast media. The Public Information Ethics Association (established in 2015) is a collegial self-regulatory body with representatives from at least five public organisations of journalists and information providers.

5.19.5.5. Out-of-court redress mechanisms for users

The draft Public Information Law, in Article 40⁵, provides for the liabilities of VSPs and the protection of individual rights as follows:

(2) Disputes between persons and video-sharing platform service providers arising from non-compliance with the requirements of Article 40⁴, Article 1 (1, 2) and Article 2 of this Law shall be resolved by applying to the Commission (RTCL) or a court. Appeal to the Commission does not prevent individuals from going to court for the same dispute.

5.19.5.6. Rights before a court for users

In addition to provisions specified under 1.1.5.5., the Amendment to the Code of Administrative Offences (2021) provides for measures related to violations of the Protection of Minors Law and the draft Public Information Law with regard to commercials and their restrictions.



Certain changes have been proposed as a result of the national transposition of the AVMSD, e.g., it is foreseen that the use of prior warnings can be applied instead of administrative penalties in the event of small-scale violations. However, these provisions do not apply to violations in relation to minors.

5.19.6. Studies, reports and research

The following reports have been prepared in relation to the transposition of the revised AVMSD:

- Vilnius University Norvaišas, V. Vartotojų sukurto turinio reguliavimas autorių teisėje (Regulation of user-generated content in copyright), MA Thesis in Law, 2019.²⁷³
- Vytautas Magnus University Leskauskaitė L. Social Media Leaders and Their Communication: Verbal and Non-Verbal Communication, MA Thesis in Communication, 2018.²⁷⁴
- Kaunas University of Technology Jurgutytė, M. Visual Content Creation Solutions for Communication with GenerationZ in Social Media, MA Thesis in Marketing Management, 2018.²⁷⁵

5.19.7. Data compilation

This factsheet is based on data compiled by Kristina Juraite, Professor of Public Communication, Vytautas Magnus University.

²⁷³ <https://epublications.vu.lt/object/elaba:69378867/69378867.pdf>.

²⁷⁴ <https://www.vdu.lt/cris/handle/20.500.12259/35647>.

²⁷⁵ <https://epubl.ktu.edu/object/elaba:28352683/28352683.pdf>.



5.20.LU - Luxembourg – National legal summary²⁷⁶

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the Law amending the amended law of 27 July 1991 on electronic media (the Law).

5.20.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Law amending the amended law of 27 July 1991 on electronic media (*Loi modifiée du 27 juillet 1991 sur les médias électroniques*).²⁷⁷

5.20.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 40. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Luxembourgish response to European Audiovisual Observatory standardised survey

²⁷⁶ The factsheet on Luxembourg incorporates feedback received from the Department of Media, Telecommunications and Digital Policy (Ministry of State) and the Luxembourg Independent Media Authority (ALIA) during the checking round with the national regulatory authorities.

²⁷⁷ http://legilux.public.lu/eli/etat/leg/recueil/presse_medias/20210312.



5.20.2.1. VSP service

Article 2 (19bis) (codified law) provides for the definition of a “video-sharing platform service”, by transposing the text of the revised AVMS verbatim, as follows:

“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 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.

5.20.2.2. VSP provider

Article 2 (4bis) (codified law) provides for the definition of “video-sharing platform provider”, by transposing the text of the revised AVMSD verbatim, as follows: “Video-sharing platform provider” means the natural or legal person who provides a video-sharing platform service”.

5.20.2.3. User-generated video

Article 2 (30) (codified law) provides for the definition “user-generated video” by transposing the text of the AVMSD verbatim, as follows:

“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.

5.20.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.20.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.20.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.20.3.1. General provisions

The wording of the 2010 AVMSD regarding “incitement to hatred based on race, sex, religion or nationality” is part of the law. Article 26bis (codified law) will be replaced by the following provisions which correspond to the text of the revised AVMS Directive with the exception of point (b) which refers to the corresponding provisions of the Luxembourg Criminal Code (which refers to issues relative to terrorism, and also contains provisions relative to child pornography and racism and xenophobia):

Article 26bis. Prohibition of incitement to violence, hatred and terrorism:

Without prejudice to the obligation to respect and protect human dignity, audiovisual media services provided by providers under the jurisdiction of the Grand Duchy of Luxembourg do not contain:

(a) any 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 of Fundamental Rights of the European Union;

(b) any public provocation to commit a terrorist offence as set out in Article 135-11, paragraphs 1 and 2, of the Criminal Code.

Relative to a VSP, Article 28septies (codified law) reads:

F. Rules applicable only to video-sharing platform services

Appropriate measures to be taken by providers of video-sharing platforms

(1) Without prejudice to Articles 60 to 63 of the amended law of 14 August 2000 on electronic commerce, providers of video-sharing platforms under the jurisdiction of the Grand Duchy of Luxembourg take appropriate measures to protect:

[...]



(b) the general public against 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 of Fundamental Rights of the European Union;

(c) the general public against programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes a criminal offence, namely public provocation to commit a terrorist offence as set out in Article 135-11, paragraphs 1 and 2, of the Criminal Code, offences concerning child pornography as set out in Article 379, point 2°, of the Criminal Code and offences concerning racism and xenophobia as set out in Articles 457-1 and 457-3 of the Criminal Code.

5.20.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services in respecting the obligations referred to in section 1.1.3.1, Article 28septies (3) (a) (codified law) provides for this obligation in the following manner:

[The] 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 paragraph 1.

5.20.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 28septies (3) (b) (codified law) relates to the requirements by:

(b) including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 27bis, paragraphs (1) to (5), for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers.

5.20.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, relative to the obligations stipulated by Article 28septies, Article 28septies (3) (c) (codified law) refers to the obligations relative to measures of:

(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.

5.20.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the VSP provider, Article 28septies (3) (d) (codified law) directly provides for this obligation relative to:

(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.

5.20.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 28septies (3) (e) (codified law) provides for this obligation relative to measures of:

(e) establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d).

5.20.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 28septies (3) (f) (codified law) provides for these measures by providing for: “(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”.



5.20.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 28septies (3) (g) (codified law) establishes these obligations by referring to: “(g) establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1”.

5.20.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 28septies (3) (h) (codified law) stipulates the obligations of: “(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”.

5.20.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 28septies (3) (i) (codified law) provides for:

(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 points (d) to (h).

5.20.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 28septies (3) (j) (codified law) provides for these obligations relative to: “(j) providing for effective media literacy measures and tools and raising users' awareness of those measures and tools”.



5.20.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by video-sharing platform providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 28septies (3) final paragraph (codified law) stipulates:

Personal data of minors collected or otherwise generated by video-sharing platform providers pursuant to points (f) and (h) of the third subparagraph shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

5.20.3.13. Other relevant provisions related to protection of minors

The codified law loses the distinction between harm and serious harm, while the most harmful content will be submitted to the strictest measures, and some other relative provisions stemming from the revised AVMSD, such as those relative to commercial communications.

5.20.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 27bis (5) of the codified law contains the following provision:

The audiovisual commercial communications shall not cause physical 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.

5.20.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications:

The current legislation stipulates that audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages. Regarding minors' exposure to commercial communications for alcoholic beverages no additional specific measures of the amended law are included in the section on VSPs.



As to commercial communications for HFSS products, the current legislation contains one provision dealing with this issue, stating that the regulatory authority, the Luxembourg Independent Media Authority (ALIA)

shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

5.20.3.16. Other relevant information

N/A.

5.20.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

Article 28septies of the codified law deals with this issue:

For the purposes of paragraphs 1 and 2, 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.

Video-sharing platform providers under Luxembourgish 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 63 of the modified law of 14 August 2000 regarding e-commerce. For the purposes of the protection of minors, provided for in paragraph 1, a), of this Article, the most harmful content shall be subject to the strictest access control measures.



5.20.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSP with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.20.5.1. Regulatory body

The competent regulatory body for VSPs is the Luxembourg Independent Media Authority (ALIA).²⁷⁸

5.20.5.2. Existence of a registration/notification system

ALIA is not in charge of the notification process. A VSP has to notify the minister in charge of the media at least 20 days prior to the start of its activity, as stipulated by Article 23quinquies (7) of the codified law. This same minister shall maintain a list of VSPs as stipulated by Article 23quinquies (6) of the codified law:

(6) The minister in charge of the media shall draw up and update a list of video-sharing platform providers established or deemed to be established in the territory of the Grand Duchy of Luxembourg and indicate the criteria set out in subsections (1) to (4) on which jurisdiction is based.

(7) Any provider of video-sharing platforms intending to provide a service deemed to fall under the jurisdiction of Luxembourg must, no later than twenty days before the start of the service, notify this intention to the minister in charge of media. The notification unequivocally identifies the video-sharing platform provider and contains the relevant information enabling the minister to determine whether the service falls within Luxembourg's jurisdiction, the name and a description of the service to be provided, and the planned starting date of the activities. By notifying, the video-sharing platform provider undertakes to give the Authority free and unencrypted access to its service or to provide it with any information required to put the Authority in a position to monitor the VSP.

²⁷⁸ <https://www.alia.lu>.



5.20.5.3. Compliance, enforcement and sanctioning powers

The new provision of the Bill assigns an additional task to the national regulatory authority ALIA which is “to establish mechanisms to evaluate the appropriateness of the measures taken by the video-sharing platforms under the Article 28septies (3)”, in Article 35 (2) (k) of the codified law.

ALIA will be monitoring and sanctioning all the provisions regarding VSPs as laid out in Article 28septies of the codified law. The penalties at ALIA’s disposal include: (a) a reprimand, (b) a reprimand with the duty to read out an announcement on air and (c) a fine of EUR 250 to 25 000 (which can be doubled if an AVSM provider repeats the same violation within six months of the fine order) as per Article 35sexies of the codified law.

5.20.5.4. Development of self- or co-regulatory codes or schemes

Article 35 (2) (i) of the codified law stipulates:

[ALIA shall] encourage the use of co-regulation and the fostering of self-regulation through codes of conduct drawn up by 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. Those codes shall be such that they are broadly accepted by the main stakeholders; clearly and unambiguously set out their objectives; provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and provide for effective enforcement including effective and proportionate sanctions.

5.20.5.5. Out-of-court redress mechanisms for users

Article 35septies of the codified law states that a grand-ducal regulation will determine the rules of procedure of such a mechanism:

*Out-of-court dispute resolution available to users and providers of video-sharing platforms
A grand-ducal regulation shall lay down the rules of procedure applicable to requests for out-of-court settlement of complaints lodged with the Authority.*

5.20.5.6. Rights before a court for users

No specific provision of the Bill deals with this issue, but nothing prevents users from asserting their rights before a court.



5.20.6. Studies, reports and research

N/A.

5.20.7. Data compilation

This factsheet is based on data compiled by Romain Kohn, independent consultant.



5.21.LV – Latvia – National legal summary²⁷⁹

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the Amendments to the Electronic Mass Media Law (EMML).

5.21.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Amendments to the Electronic Mass Media Law (*Grozījumi Elektronisko plašsaziņas līdzekļu likumā*).²⁸⁰

5.21.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

²⁷⁹ The factsheet on Latvia incorporates the feedback received from the National Electronic Mass Media Council during the checking round with the national regulatory authorities.

²⁸⁰ <https://titania.saeima.lv/LIVS13/saeimalivs13.nsf/0/664611FB1287C91BC2258557002A2EDE?OpenDocument>.



Table 41. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	No.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Latvian response to European Audiovisual Observatory standardised survey

5.21.2.1. VSP service

Article 1, Clause 34² of the EMLL provides a definition by transposing the wording of the revised AVMSD verbatim:

Video-sharing platform service – a service (or a dissociable section thereof), to which no editorial responsibility may be attached, and the principal purpose of whose essential functionality is, by using public electronic communications networks, to offer to the general public informative, entertaining or educational programmes and user-generated videos, and where the organisation of which is determined by the service provider, including by automatic means or algorithms, in particular by displaying, tagging and sequencing.”

5.21.2.2. VSP provider

There is no definition of VSP provider in the EMLL.

5.21.2.3. User-generated video

The EMLL, in Article 1, Clause 12¹ provides a definition by transposing the wording of the AVMSD verbatim:

User-generated video – 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.

5.21.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.21.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

In accordance with the annual work plan of the monitoring department of the National Electronic Mass Media Council (NEPLP), this regulatory authority is tasked with drafting the guidelines for identifying video on demand (VOD) platforms. The guidelines are also intended to provide definitions of these concepts.

5.21.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.21.3.1. General provisions

No legal definition of content inciting to violence or hatred is included either in the EMLL or in other laws. Neither is there any legal definition of content whose dissemination constitutes an activity which is a criminal offence under EU law. There is, however, a legal definition of “violence”²⁸¹ in the Law on Protecting the Rights of Children: abuse – physical or emotional cruelty of any kind, sexual abuse, negligence or any other treatment which endangers or may endanger the health, life, development or self-respect of a child. The legal obligations of VSPs in this regard are found in Article 23² as follows:

Article 23² Audio and audiovisual commercial communication in the video-sharing platforms
(1) Video-sharing platform service providers perform relevant measures to protect the public from such programmes and user-generated videos and audiovisual commercial communication, where:

²⁸¹ Please note that the English translation of the law uses the term “abuse”, however, the Latvian term “vardarbība” (“violence”) is the same word as used in the EMLL and in the Criminal Law.



- 1) *Content may harm the physical, mental or moral development of minors;*
- 2) *Content may endanger public and which contains incitement to violence or hatred against any person or group of persons due to any reason mentioned in the Article 21 of the Charter of Fundamental Rights of the European Union or Article 14 of the European Convention on Human Rights;*
- 3) *Distribution of the content is a criminal offence (public endorsement or justification of terrorism, public provocation to terrorism, distribution of material, which endorses, justifies or invites to terrorism, or threat to commit terrorism if there are grounds to believe that it may be implemented, or demonstration of such pornographic show or distribution of materials of pornographic character, which contain child pornography, public provocation to genocide, public endorsement of genocide, crime against humanity, crime against peace or war crime, or endorsement, denial, justification or gross denigration of performed genocide, crime against humanity, crime against peace or war crimes, and actions, which are directed to incitement of national, ethnical, racial or religious hatred or conflicts.*

The NEPLP recently adopted guidelines regarding Article 26 of the EMMML stating:

The programmes and broadcasts of the electronic mass media may not contain:

- 1) *stories which accentuate violence...*
- 3) *incitement to hatred or discrimination against a person or group of persons on the grounds of sex, race or ethnic origin, nationality, religious affiliation or faith, disability, age or other circumstances;*
- 4) *incitement to war or the initiation of a military conflict.*

5.21.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the obligations referred to in section 1.1.3.1, Article 23,² part 3 of the EMMML provides for these obligations while detailing all the issues for which VSPs need to develop codes of conduct, thereby encompassing all of the obligations stemming from Article 28b (3) of the revised AVMSD:

The video-sharing platform service providers have to develop a publicly available code of conduct, where they indicate the basic rules of operation, accepted rules of ethical activities, rules on unacceptable audio and audiovisual commercial communication, including such as directed to minors and which may adversely affect the psychological or physical development of minors. The code of conduct includes also rules, which refer to audio and audiovisual commercial communication, which is included in programmes directed to children, as well as before or after them, regarding food and drinks, which include foodstuffs and substances with certain nutritious value or physiological impact, especially such substances as fat, fatty acids, salt or potassium and sugar, the excessive use of which in food



is not recommended. The video-sharing platform service providers publish the codes of conduct on their webpages.

- 5.21.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Please see under 5.21.3.2.

- 5.21.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Please see under 5.21.3.2.

- 5.21.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Please see under 5.21.3.2.

- 5.21.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Please see under 5.21.3.2.

- 5.21.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Please see under 5.21.3.2.

- 5.21.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Please see under 5.21.3.2.



5.21.3.9. 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 – Article 28b (3) (h) AVMSD

Please see under 5.21.3.2.

5.21.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Please see under 5.21.3.2.

5.21.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Please see under 5.21.3.2.

5.21.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Please see under 5.21.3.2.

5.21.3.13. Other relevant provisions related to the protection of minors

The Law on the Protection of Children's Rights sets out the rights and freedoms of a child and the protection thereof. The Law on the Restriction of Pornography provides for restrictions on the distribution of pornographic materials, whilst also providing relevant definitions of such materials. Furthermore, the Criminal Law provides for criminal liability for various offences against the family and minors, including for violations in relation to the distribution of pornographic materials.

Article 24, paragraph 9 of the EMML states:

Audio and audiovisual works displaying physical or psychological violence, bloody or horror scenes, scenes relating to the use of narcotics and sexual acts or containing foul language may not be transmitted between the hours of 7.00 and 22.00.

Article 24, paragraph 10 of the EMML further states:

The electronic mass media shall not distribute audio and audiovisual works with content that may be harmful to the physical, mental and moral development of minors, unless they



have been scheduled for a time other than that referred to in Paragraph nine of this Article, or the electronic mass media provides conditional access control. If conditional access control is not ensured, an acoustic warning shall be provided before such audiovisual works and they shall be specially marked with a visual symbol.

5.21.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

Article 36, part two, of the current EMML (the part that will not be amended) provides for protective measures relative to alcohol:

(1) [..].

(2) *The following provisions shall be observed when inserting audio and audiovisual commercial communications related to alcoholic beverages:*

- 1) they may not be aimed at minors, and minors shall not participate in them;*
- 2) the consumption of alcoholic beverages shall not be linked to enhanced physical performance or to driving;*
- 3) they shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;*
- 4) they shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;*
- 5) they shall not place emphasis on a high alcoholic content in alcoholic beverages;*
- 6) they shall not create the impression that the consumption of alcoholic beverages contributes towards social or sexual success.*

5.21.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

No additional obligations are foreseen in this respect, apart from those stemming from the aforementioned general provisions. However, only beer and wine may be advertised in audiovisual commercials, as stated in Article 36, paragraph 1 of the EMML.

5.21.3.16. Other relevant information

N/A.



5.21.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

No specific provision of the EMLL deals with this issue.

5.21.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as to the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.21.5.1. Regulatory body

The competent regulatory body for VSPs is the NEPLP.²⁸²

5.21.5.2. Existence of a registration/notification system

Article 23¹ of the EMLL provides for the NEPLP's obligation to establish and maintain a list of the VSPs which fall under Latvian jurisdiction, and reads:

[..]

(7) The National Electronic Mass Media Council creates and regularly updates the list of providers of video-sharing platform services, which are established or regarding which it may be considered that they are established in the territory of Latvia, and indicates on which criteria listed in parts two, three, four, or five of this Article its jurisdiction is based. The

²⁸² <https://www.neplpadome.lv/>.



National Electronic Mass Media Council informs the European Commission on the list of providers of video-sharing platform services, including on all of its updates.

5.21.5.3. Compliance, enforcement and sanctioning powers

The legal framework of the role of the NEPLP with respect to VSPs is provided in the EMLL, Article 23,¹ as follows: “The assessment of the compliance of a service with the substance of video-sharing platforms in the understanding of this law is made by the National Electronic Mass Media Council.”

5.21.5.4. Development of self- or co-regulatory codes or schemes

No specific provision of the EMLL deals with this issue. However, the current EMLL provides for a self-regulatory measure by requesting sight of the codes of conduct pertaining to all electronic mass media. An already existing self-regulatory body is the Latvian Media Ethics Council, whose activities are based on a media ethics code that protects media values such as freedom of expression, diversity of information and views, editorial independence, media credibility, etc.

Article 23,² paragraph 3 of the EMLL states:

The video-sharing platform service providers have to develop a publicly available code of conduct, where they indicate the basic rules of operation, accepted rules of ethical activities, rules on unacceptable audio and audiovisual commercial communication, including such as directed to minors and which may adversely affect the psychological or physical development of minors. The code of conduct includes also rules, which refer to audio and audiovisual commercial communication, which is included in programmes directed to children, as well as before or after them, regarding food and drinks, which include foodstuffs and substances with certain nutritious value or physiological impact, especially such substances as fat, fatty acids, salt or potassium and sugar, the excessive use of which in food is not recommended. The video-sharing platform service providers publish the codes of conduct on their webpages.

5.21.5.5. Out-of-court redress mechanisms for users

No specific provision of the EMLL deals with this issue.

5.21.5.6. Rights before a court for users

No specific provision of the EMLL deals with this issue, but nothing prevents users from asserting their rights before a court.



5.21.6. Studies, reports and research

N/A.

5.21.7. Data compilation

This factsheet is based on data compiled by Ieva Andersone, Attorney-at-Law.



5.22.MT – Malta – National legal summary²⁸³

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the draft amendments to the Broadcasting Act (the Act).

5.22.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft amendments to the Broadcasting Act (Att sabiex jemenda l-Att dwar ix-Xandir, Kap. 350).²⁸⁴

5.22.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 42. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

²⁸³ The factsheet on Malta incorporates the feedback received from Joanna Spiteri (Malta Broadcasting Authority) during the checking round with the national regulatory authorities.

²⁸⁴ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=30266&l=1>.



Source: Maltese response to European Audiovisual Observatory standardised survey

5.22.2.1. VSP service

Chapter 350, Article 16 G of the Act defines the term “video-sharing platform service” by transposing the text of the revised AVMSD verbatim, as follows:

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 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.

5.22.2.2. VSP provider

Chapter 350, Article 16 G of the Act defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “Video-sharing platform provider means the natural or legal person who provides a video-sharing platform service.”

5.22.2.3. User-generated video

Chapter 350, Article 16 G of the Act provides for the definition of user-generated content as follows:

User-generated content 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.

5.22.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.22.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.22.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites to violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.22.3.1. General provisions

Article 160 (7) of the Act stipulates that audiovisual media services shall not include:

- (a) Incitement to violence or hatred 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.*

This includes references to public provocation to commit a terrorist attack. Further, the Act makes specific reference to the obligation for VSPs under the jurisdiction of Malta to take necessary measures to protect 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 group. Legislation also makes reference to offences concerning child pornography and racism and xenophobia.

The relevant provisions are included in Article 16S (1) (a) (b) and (c) of the Act, which read as follows:

Without prejudice to Articles 19, 20, 21 and 22 of the Electronic Commerce 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 communications which may impair their physical, mental or moral development in accordance with Article 16JA;*
- (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 of Fundamental Rights of the European Union;
(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, Part II, 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 and in Book First, Part II, Title VII, Sub-title II 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.

Current Subsidiary Legislation 350.05 – Broadcasting Code for the Protection of Minors. Paragraph 3 of this legislative framework states:

Broadcasts shall not include any programmes which might seriously impair the physical, mental or moral development of minors, and in particular they shall not include programmes that involve pornography or gratuitous violence.

Article 16JA (1) of the Act stipulates:

Audiovisual media services provided by media service providers which may impair the physical, mental or moral development of minors shall only be made available in such a way as to ensure that minors will not normally see or hear them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures.

Article 16JA (2) of the Act further stipulates that: “The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.” Additionally, the watershed has now been extended to 9.30 p.m.

5.22.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, Article 16S (1) of the Act refers to appropriate measures regarding the content of VSPs by transposing the obligations from the revised AVMSD in full:

VSPs under the jurisdiction of Malta are required to take measures to protect minors from programmes, user-generated videos and audiovisual commercial communications from content that may impair their physical mental and moral development. This can be done by age verification tools or other technical measures.



5.22.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 16 S (3) of the Act states:

Video-sharing platform providers under the jurisdiction of Malta shall take appropriate measures to comply with 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.

5.22.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 16S (4) of the Act provides for this obligation in the following manner:

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 paragraph (c) of sub-article (6) or the provider has knowledge of that fact.

5.22.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the Act, Article 16 S (6) (d) stipulates the obligation of establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag content, as follows:

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) provided on its platform



5.22.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 16S (6) (d)(e) of the Act provides for the obligation for VSPs to establish transparent procedures for users to flag content and the outcome of such reporting, as follows:

establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in paragraph (d)

5.22.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 16S (6) (f) of the Act stipulates the need for VSPs to establish and operate age verification systems with respect to harmful content for minors, as follows: “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”.

5.22.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content referred to in Article 176/4 of the draft legislation, Article 16S(6) (g) of the Act stipulates the need to establish and operate easy-to-use systems, as follows: “establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in sub-article (1)”.

5.22.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 16S(6) (h) of the Act provides for the establishment of 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, as follows: “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”.

5.22.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures referred to in Article 16S6 (i) plus Article 16S (1), the Act in Article 16S (11) draws a parallel to an existing article within the Broadcasting Act (Article 21A) which outlines how a third party can submit a complaint for investigation, as follows:

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.

In addition to this there is Subsidiary Legislation 350.06 – Code for the Investigation and Determination of Complaints. This is a legal notice that outlines the procedure the Broadcasting Authority adopts when handling a complaint. The complainant is normally instructed to complain directly to the broadcaster and inform the regulator. If, within 72 hours of the filing of the complaint, the complainant either does not receive a reply or receives a reply which is not deemed to constitute a remedy, then the complainant has the right to call on the regulator to investigate the matter and conduct a hearing during which both the complainant and the broadcaster/service provider can make their submissions on the case. The regulator then issues a decision which is communicated to both parties.

5.22.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 16MA (1) of the Act stipulates the creation of a board known as the Media Literacy Development Board to create a strategy for media literacy skills, while Article 16S6(j) provides for effective media literacy measures and tools and raising users' awareness of those measures and tools, as follows: “providing for effective media literacy measures and tools and raising users' awareness of those measures and tools”.



Article 16MA (1) specifies that the minister, in consultation with the Authority, shall appoint a board to be referred to as the “Media Literacy Development Board” consisting of no fewer than 10 members including a number of media experts and chaired by a chairperson appointed by the minister, so that after consultation and assistance from the Authority and other government entities, draw up a plan, promote and take all the necessary measures for the development of media literacy skills.

5.22.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 16S(7) of the Act states:

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

5.22.3.13. Other relevant provisions related to the protection of minors

N/A.

5.22.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

While there is no definition of what constitutes physical, mental or moral development, Article 16(K) (5) of the Act elaborates on the situations involving or depicting minors which are prohibited in advertising:

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.

The same principle can be found in Subsidiary Legislation 350.05 – Code for the Protection of Minors which outlines a number of provisions aimed at safeguarding minors particularly in relation to advertising. In particular, minors should not be featured entering unfamiliar places or talking to strangers, playing with matches or disinfectants, leaning on windows or playing in the road.



5.22.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The provisions of Article 16K of the Act (regarding audiovisual commercial communications) are included in the provisions of Article 16S (2) (3), therefore the provisions applicable for audiovisual media service providers also apply to VSPs. This means that advertising relating to alcoholic products and HFSS foods are subject to the same regulation as applicable to audiovisual media services.

Article 16(K) (6) of the Act stipulates:

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.

In addition to this, Article 16 K (8) of the Act stipulates:

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

- (a) They shall not be aimed specifically at minors or, in particular, depict minors acquiring or consuming such beverages;*
- (b) They shall not link the consumption of alcohol to enhanced physical performance or to driving;*
- (c) They shall not create the impression that the consumption of alcohol contributes towards social or sexual success;*
- (d) They shall not claim that alcohol has therapeutic qualities or that it is a stimulant, or sedative, or a means of resolving personal conflicts;*
- (e) They shall not encourage immoderate consumption of alcohol or present abstinence therefrom or moderation therein in a negative light;*
- (f) They shall not place emphasis on high alcoholic content as being quality of beverage.*

Further, Article 16S (2) and (3) of the Act outline provisions for VSPs to be compliant with the provisions of Article 16K for content that is marketed, sold or arranged by the VSP providers and also for content that is not marketed, sold or arranged by those VSPs. For the latter, however, consideration is given to the limited control VSPs have over these issues, by: "taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications."



5.22.3.16. Other relevant information

Legal Notice 350. is a code for the protection of minors which was originally enacted in 2000 and has since been updated. It mainly deals with how minors need to be portrayed in audiovisual commercial communications although the first few paragraphs deal with programming in general, particularly spelling out the need for broadcasters not to include any programmes which might seriously impair the physical, mental or moral development of children.

5.22.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

No specific provision of the Act deals with this issue, except for the reference to audiovisual commercial communication and harmful content applicable to minors as to the nature of the content.

5.22.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).



5.22.5.1. Regulatory body

The competent regulatory body for VSPs is the Malta Broadcasting Authority (BA).²⁸⁵

5.22.5.2. Existence of a registration/notification system

All broadcasting related matters fall under the competency of the BA, while the Act, in Article 16(R)(7) outlines the registration process for a VSP under Maltese law:

A VSP 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, address, ID or passport number or any other documentation as may be accepted by the Authority or (b) in the case of a legal person, the name and address of the company and of the registered office.

5.22.5.3. Compliance, enforcement and sanctioning powers

Article 16S (10) of the Act refers to appropriateness of measures and the right for the BA to issue directives where it considers necessary. Article 15 vests of the Broadcasting Authority with the power to issue any directive in relation to VSPs:

The Authority shall assess the appropriateness of the measures referred to in sub-article (3) 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.

5.22.5.4. Development of self- or co-regulatory codes or schemes

No specific provision of the Act provides for a legal obligation, except for references to encouragement of the use of co-regulation and self-regulation through codes of conduct. There is no legal obligation for VSPs or audiovisual service providers to form a self- or co-regulatory approach/code. Furthermore, no structured self- or co-regulatory frameworks exist for the industry in Malta.

5.22.5.5. Out-of-court redress mechanisms for users

Article 16 (S) 11 of the Act makes provisions for disputes arising between users and VSPs. These shall be dealt with according to the current Article 21A of the Broadcasting Act, determined by Subsidiary Legislation 350.06 (Code for the Investigation and Determination of Complaints):

²⁸⁵ <http://www.ba-malta.org/>



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;

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

5.22.5.6. Rights before a court for users

Article 16(S) 11 states that:

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

5.22.6. Studies, reports and research

N/A.

5.22.7. Data compilation

This factsheet is based on data compiled by Pierre Cassar, Lecturer and Director of Marketing and Communication at the University of Malta.



5.23.NL – The Netherlands – National legal summary²⁸⁶

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) have been transposed into the Media Act 2008.

5.23.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Amendments to the Media Act 2008 (*Mediawet 2008*).^{287 288}

5.23.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 43. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Dutch response to European Audiovisual Observatory standardised survey

²⁸⁶ The factsheet on the Netherlands incorporates the feedback received from Marcel Betzel, *Commissariaat voor de media*, during the checking round with the national regulatory authorities.

²⁸⁷ https://www.eerstekamer.nl/behandeling/20201021/publicatie_wet_4/document3/f=/vld2h6eh0jxl.pdf

²⁸⁸ A link to the continuing text of the Media Act 2008:
<https://wetten.overheid.nl/BWBR0025028/2020-11-01>.



5.23.2.1. VSP service

Article 3a.1 of the Media Act 2008 provides the definition of a VSP service in line with the text of the revised AVMSD:

- a service or a dissociable section thereof,*
- a. where the principal purpose or an essential functionality of the service is devoted to providing programmes or user-generated videos to the general public in order to inform, entertain or educate,*
 - b. for which the video-sharing platform provider does not have editorial responsibility,*
 - c. the organisation of which is determined by the video-sharing platform provider by automatic means or algorithms, and,*
 - d. which is offered by means of a public electronic communications network within the meaning of Article 1.1 of the Telecommunications Act.*

5.23.2.2. VSP provider

Article 3a.1 of the Media Act 2008 provides for the definition of a VSP provider by transposing the text of the revised AVMSD verbatim, as follows: “the natural or legal person who provides a video-sharing platform service.”

5.23.2.3. User-generated video

Article 3a.1 of the Media Act 2008 provides for the definition of user-generated video by transposing the wording of the AVMSD verbatim, as follows:

- 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.*

5.23.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.23.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.23.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites to violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil with these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.23.3.1. General provisions

Currently, measures against incitement to violence or hatred, etc. are regulated by criminal law.

Article 4.1 of the Media Act 2008 has been replaced by Article 4.1 and 4.1a, which will apply to “audiovisual media content”, and will not be applicable to VSPs. Article 4.1 of the Media Act 2008 obliges AVMS providers to affiliate with the Netherlands Institute for the Classification of Audiovisual Media (NICAM), the Dutch self-regulatory body, in relation to the classification of content under the *Kijkwijzer* system. In practice, most of the on demand AVMS providers have already done so (in their capacity as commercial broadcasters or, like Netflix, on a voluntary basis). Article 4.1a, paragraph 2 of the Media Act 2008 states that the media service provider is responsible for making the most harmful content inaccessible for people under the age of 16, such as gratuitous violence and pornography, but this is not applicable to VSPs. Article 4.2 of the Media Act 2008 stipulates the criteria for the regulations (of NICAM) with regard to the classification of audiovisual content. A media service provider that uses the services of a VSP needs to meet the requirements of Article 4.1 and 4.1a and, therefore, of NICAM.

For VSPs, Article 3a.3, paragraph 1 of the Media Act 2008 introduces the general obligation to establish a code of conduct in this regard, referring directly to the provisions of the revised AVMSD:

A video-sharing platform provider adopts a code of conduct which provides the measures laid down in Article 28b, paragraphs 1 and 2, second and fourth subparagraph, of the AVMS Directive and applies this code of conduct and these measures to the video-sharing platform.



As for commercial communications, the Dutch Advertising Code (hereinafter “the Advertising Code”) – established by the Advertising Authority, a self-regulatory body – contains the relevant rules. The Advertising Code is divided into a general section and a section on special advertising codes. The general section contains rules with which all advertising should comply, such as the rule that advertisements may not be misleading or untrue. This section also contains a number of other standards, one of which stipulates that advertising must not be gratuitously offensive or at odds with good taste and decency. Apart from the general section, the special codes may apply to advertising for specific products and services. The two relevant special codes are the Advertising Code for Social Media & Influencer Marketing (RSM) and the Code for Advertising Directed at Children and Young People. The key element of the RSM is that if an advertiser offers the distributor (for example a vlogger) any benefit, or chance thereof, for distributing advertising via social media and that benefit affects the credibility of the relevant communication, the relationship between the advertiser and the distributor must be clear. Both the advertiser and the distributor are responsible for compliance with Articles 3, 4 and 5 of the RSM (these Articles regulate disclosure and recognisability of a relevant relationship, a ban on manipulation and on directly encouraging children aged 12 or under to advertise products or services on social media).

The Media Act 2008 in Article 3a.5 introduces the following general obligations for VSPs:

- 1. Audiovisual commercial communications on a video platform service shall be readily recognisable as such.*
- 2. In audiovisual commercial communication no subliminal techniques shall be used.*
- 3. Surreptitious audiovisual commercial communication shall be prohibited.*
- 4. In the case that programmes and user-generated videos contain audiovisual commercial communications and a video-sharing platform provider has knowledge of that fact, the video-sharing platform provider clearly informs users accordingly.*

In addition, the protection of minors in relation to commercial communications on VSPs will be subject to an extensive self-regulatory system. In accordance with Article 3a.4 of the Media Act 2008, a VSP provider will be obliged to be affiliated with the Advertising Code Authority, an independent body that decides, after a transparent and swift procedure, whether an advertisement conflicts with the Advertising Code, and to prove this by means of a written declaration from the Advertising Code Authority. Article 3a.4, paragraphs 1 and 2 of the Media Act 2008 stipulates:

- 1. A video-sharing platform provider which markets, sells or arranges audiovisual commercial communications, is affiliated with the Dutch Advertising Code, or a comparable code established by the Advertising Code Authority, and therefore subject to supervision by the Advertising Code Authority.*
- 2. Affiliation is to be proved by means of submitting to the Dutch Media Authority a written declaration of the Advertising Code Authority.*



5.23.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 5.23.3.1, Article 3a.3, paragraphs 1 and 2 of the Media Act 2008 establishes that the code of conduct needs to contain the measures from the revised AVMSD, again referring directly to the text of the revised AVMSD, without further elaboration:

- 1. A video-sharing platform provider adopts a code of conduct which provides the measures laid down in Article 28b, paragraphs 1 and 2, second and fourth subparagraph, of the AVMS Directive and applies this code of conduct and these measures to the video-sharing platform.*
- 2. The code of conduct, provided for in paragraph 1 of this Article, shall consist of, as appropriate, the measures laid down in Article 28b, paragraph 3, of the AVMS Directive.*

5.23.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Please see under 5.23.3.2.

5.23.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Please see under 5.23.3.2.

5.23.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Please see under 5.23.3.2.

5.23.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Please see under 5.23.3.2.



5.23.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Please see under 5.23.3.2.

5.23.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Please see under 5.23.3.2.

5.23.3.9. 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 – Article 28b (3) (h) AVMSD

Please see under 5.23.3.2.

5.23.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Please see under 5.23.3.2.

5.23.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Please see under 5.23.3.2.

5.23.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Please see under 5.23.3.2.

5.23.3.13. Other relevant provisions related to the protection of minors

N/A.



5.23.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

In addition to the rules mentioned earlier, relevant regulation is also found in the Code for Advertising Directed at Children and Young People. When making advertising directed at children and minors/youths, the recognisability of the advertising communication is important. In addition to the Advertising Code, in this Special Code the manner in which the recognisability of the advertising communication directed at children and minors is expanded. This Special Code applies to all sorts of media (platforms).

The RSM applies to all social media platforms and is part of the Advertising Code. The complaint procedure of the Advertising Code Committee is applicable.

Finally, it should be mentioned that in 2017 a group of Dutch YouTube vloggers launched a self-regulatory mechanism known as the Social Code, a voluntary code in collaboration with the Dutch Media Authority. The Social Code, which only applies to YouTube, contains four simple guidelines that make it clear when videos will be sponsored, involve product placement or free samples or are of entirely independent content. However, in a recent edition of *Mediaforum*, a scientific review on media law, this code was heavily criticised for being in breach of the AVMS Directive and, moreover, for the fact that none of the vloggers who had initiated the code actually followed it.

5.23.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The obligations with regards to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications are governed by the self-regulatory system of the Advertising Code. The standards of the Advertising Code are mainly addressed to the advertisers and not to the VSP provider as such. Therefore, no distinction is currently made between commercial communications that are or are not marketed, sold or arranged by VSP providers. Furthermore, the Advertising Code for alcoholic beverages, in Articles 10 to 13 inclusively and Article 23 specifically, is aimed at commercial communications concerning minors. Also, the Advertising Code for food products, in Articles 8 and 9 specifically, addresses advertising directed at children. Article 8 stipulates that advertising for food products intended for children of 12 years and younger is not permitted (with some exceptions). Article 9 deals with commercial communications aimed at schools and nurseries and refers to sponsorship and schools.

5.23.3.16. Other relevant information

N/A.



5.23.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

No specific provision of the revised Media Act 2008 deals with this issue.

5.23.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.23.5.1. Regulatory body

The competent regulatory body for VSPs is the *Commissariaat voor de Media* (Dutch Media Authority – CvdM).²⁸⁹

5.23.5.2. Existence of a registration/notification system

Under the revised Media Act 2008, VSP providers will be obliged to adopt a code of conduct that meets the requirements of the AVMS Directive and to apply the code of conduct of the VSP. (Article 3a.3 of the Media Act 2008). The CvdM will monitor the establishment, the content and the application of the code, in accordance with Article 7.11 of the Media Act 2008, which is the legal basis for the Dutch Media Authority to exercise its authority.

Article 3a.2, paragraph 2 of the Media Act 2008 obliges a VSP provider to publish the requested data directly, permanently and easily, including its name, the place where the

²⁸⁹ <https://www.cvdM.nl/>



company has its registered office, contact information including mail address and internet address, and the name of the CvdM as the regulator that is entrusted with the supervision of compliance with the provisions of the Media Act with regard to VSP providers. It states:

A video-sharing platform provider shall make easily, directly and permanently accessible to the public the following information:

- a. name;*
- b. the address at which it is established;*
- c. the details, among which an email address or internet address, and,*
- d. the name of the Dutch Media Authority that is entrusted with the supervision of compliance with the provisions under of pursuant to this chapter.*

Subsequently, Article 7.22, paragraph 2 of the Media Act 2008 obliges the CvdM to establish and maintain a list of VSP providers that fall within the Dutch jurisdiction:

The Dutch Media Authority shall maintain a list of the video-sharing platform providers which come within the jurisdiction of the Netherlands according to Article 3a.2, paragraph 1, indicating on which of the criteria set out in Article 28a, paragraphs 1 to 4, of the AVMS Directive their jurisdiction is based.

5.23.5.3. Compliance, enforcement and sanctioning powers

The CvdM will monitor the establishment, the content and the application of the codes of conduct. The criteria for an effective code of conduct as laid down in the revised AVMSD are transposed into Article 3a.3 of the Media Act 2008, and the CvdM will supervise the quality of the codes of conduct adopted by VSPs.

In the explanatory memorandum to the draft law, the government asserts that the current system of self-regulation and enforcement by the Advertising Code Authority and the CvdM is sufficiently effective and offers effective and proportionate sanctions in accordance with the revised AVMSD. Therefore, the government sees no reason for an extension of the enforcement powers of the CvdM.

5.23.5.4. Development of self- or co-regulatory codes or schemes

As stated earlier, under the Media Act 2008, Article 3a.3, VSP providers will be obliged to adopt a code of conduct that meets the requirements of the revised AVMSD. In addition, in accordance with Article 3a.4, paragraphs 1 and 2 of the Media Act 2008, a VSP provider will be obliged to be affiliated with the Advertising Code Authority and to be able to prove this by means of a written declaration from the Advertising Code Authority, supervised by the CvdM.



The Dutch media sector has two other systems of co- and self-regulation. These systems include the Advertising Code Committee and NICAM, as mentioned earlier.

5.23.5.5. Out-of-court redress mechanisms for users

No specific provision of the Media Act 2008 deals with this issue. However, the explanatory memorandum to the draft law refers to the various out-of-court mechanisms that are currently available in the Netherlands. A VSP provider can classify a dispute committee under the Foundation for Consumer Complaints Board. This foundation is regulated by the Implementation Act of the consumer alternative dispute resolution directive.

5.23.5.6. Rights before a court for users

No specific provision of the Media Act 2008 deals with this issue, but nothing prevents users from asserting their rights before a court.

5.23.6. Studies, reports and research

- Study by Radboud University and the University of Amsterdam, commissioned by the Dutch Media Authority: “How do minors experience sponsored video on YouTube?”, 2019.²⁹⁰

5.23.7. Data compilation

This factsheet is based on data compiled by Louise Doorman, independent legal adviser.

²⁹⁰ <https://www.cvdm.nl/sites/default/files/files/Rapportage%20Onderzoek%20effecten%20reclame%20in%20YouTube%20video%E2%80%99s.pdf>.



5.24.NO – Norway – National legal summary²⁹¹

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) have not been incorporated in the EEA-agreement yet, but the Norwegian Government produced an EEA position note²⁹² on 29 April 2019 on the changes in the AVMS Directive.

5.24.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Act relating to broadcasting and audiovisual on-demand services (the Broadcasting Act – *LOV-1992-12-04-17 Lov om kringkasting og audiovisuelle bestillingstjenester (kringkastingsloven)*).²⁹³
- Act relating to the protection of minors against harmful audiovisual programmes (*LOV-2015-02-06-7 Lov om beskyttelse av mindreårige mot skadelige bildeprogram mv*).²⁹⁴
- Act relating to the editorial independence and liability of editor-controlled journalistic media (the Media Liability Act – *LOV-2020-05-29-59 Lov om redaksjonell uavhengighet og ansvar i redaktørstyrte journalistiske medier – Medieansvarsloven*).²⁹⁵
- The Penal Code (*LOV-2005-05-20-28 Lov om straff – Straffeloven*).²⁹⁶

²⁹¹ The factsheet on Norway incorporates feedback received from Linda Andersen, Gudbrand Guthus and Hanne Sekkelsten, from the Norwegian Media Authority (Medietilsynet), as well as Harald Høiby from the Ministry of Culture, during the checking round with the national regulatory authorities.

²⁹² In case the revised AVMSD is to be incorporated, the Norwegian Government has signalled the changes needed in the law, while, in parallel to the implementation of the AVMSD, the Norwegian Government appointed the Freedom of Expression Commission in 2020 to review the social, technological, legal and economic frameworks for freedom of expression in today's society. The Commission's report in the form of an Official Norwegian Report is to be presented to the Ministry of Culture by 1 March 2022.

²⁹³ <https://lovdata.no/dokument/NL/lov/1992-12-04-127>.

²⁹⁴ <https://lovdata.no/dokument/NL/lov/2015-02-06-7> English version available at: <https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/act-relating-to-the-protection-of-minors-against-harmful-audiovisual-programmes-norway-unofficial-translation-february-2015.pdf>

²⁹⁵ <https://lovdata.no/dokument/NL/lov/2020-05-29-59> English version is available at: https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/210216-unoff-210216_eng-versionact-relating-to-the-editorial-independence-and-liability-of-editor.pdf English version available at: https://lovdata.no/dokument/NLE/lov/2005-05-20-28/*#*.

²⁹⁶ <https://lovdata.no/dokument/NL/lov/2005-05-20-28>. Unofficial English version is available at: [https://www.helsedirektoratet.no/tema/alkohol/Act%20on%20the%20Sale%20of%20Alcoholic%20Beverages.%20etc.%20\(Alcohol%20Act\)%20-%20Unofficial%20version.pdf/_attachment/inline/cf610698-d822-4e67-](https://www.helsedirektoratet.no/tema/alkohol/Act%20on%20the%20Sale%20of%20Alcoholic%20Beverages.%20etc.%20(Alcohol%20Act)%20-%20Unofficial%20version.pdf/_attachment/inline/cf610698-d822-4e67-)



- Act on the sale of alcoholic beverages, etc. (*LOV-1989-02-27 Lov om omsetning av alkoholholdig drikke m.v. – Alkoholloven*).²⁹⁷
- Act relating to protection against tobacco damage (*LOV-1973-03-09-14 Lov om vern mot tobakksskader – Tobaksskadeloven*).²⁹⁸
- The Norwegian Copyright Act (*LOV-2018-06-15-40 Lov om opphavsrett til åndsverk – åndsverksloven*).²⁹⁹
- Act relating to the control of marketing and contract terms and conditions, etc. (the Marketing Control Act – *LOV-2009-01-09-2 Lov om kontroll med markedsføring og avtalevilkår mv – markedsføringsloven*).³⁰⁰
- Act relating to certain aspects of electronic commerce and other information society services (the Electronic Commerce Act – *LOV-2003-05-23-35 Lov om visse sider av elektronisk handel og andre informasjonssamfunnstjenester – Ehandelsloven*).³⁰¹
- Regulation relating to broadcasting and audiovisual on-demand services (*FOR-1997-02-28-153 Forskrift om kringkasting og audiovisuelle medietjenester*).³⁰²
- Regulations on the protection of minors against harmful audiovisual programmes (*FOR-2015-06-26-800 Forskrift om beskyttelse av mindreårige mot skadelige bildeprogram*).³⁰³
- Regulations on medical products (*FOR-2009-12-19-1839 Forskrift om legemidler – legemiddelforskriften*).³⁰⁴
- Regulations on subsidies for audiovisual production (*FOR-2016-10-31-164 Forskrift om tilskudd til audiovisuell produksjon*).³⁰⁵

Secondary legislation:

- EEA position note 29.04.2019 on the changes in the revised AVMS Directive (*EØS-notat 29.04.2019 Endringer i AMT-direktivet*).³⁰⁶
- The Norwegian Media Authority: Guide for Youtubers and Video Bloggers about Labelling of Advertisements.³⁰⁷

9c64-

[803a2939971f:1aa4342cb2f3893cbb5b436fa29e18d25a161b7b/Act%20on%20the%20Sale%20of%20Alcoholic%20Beverages,%20etc.%20\(Alcohol%20Act\)%20-%20Unofficial%20version.pdf](https://lovdatabasen.no/lov/1989-02-27-3536fa29e18d25a161b7b/Act%20on%20the%20Sale%20of%20Alcoholic%20Beverages,%20etc.%20(Alcohol%20Act)%20-%20Unofficial%20version.pdf).

²⁹⁷ <https://lovdatabasen.no/lov/1989-06-02-27>.

²⁹⁸ <https://lovdatabasen.no/lov/1973-03-09-14>.

²⁹⁹ <https://lovdatabasen.no/lov/2018-06-15-40>.

³⁰⁰ <https://lovdatabasen.no/lov/2009-01-09-2>.

³⁰¹ <https://lovdatabasen.no/lov/2003-05-23-35?q=ehandel>.

³⁰² <https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/180418-regulation-relating-to-broadcasting-and-audiovisual-on-demand-services.pdf>.

³⁰³ <https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/engelsk-bildeprogramforskrift.pdf>.

³⁰⁴ <https://lovdatabasen.no/lov/2009-12-18-1839>.

³⁰⁵ <https://lovdatabasen.no/lov/2016-10-31-1264>.

³⁰⁶ <https://www.regjeringen.no/no/sub/eos-notatbasen/notatene/2016/juni/forslag-til-endringer-i-amt-direktivet/id2503512/>.

³⁰⁷ <https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/engelsk-youtube-veileder.pdf>.



- The Norwegian Media Authority: Guidelines – Age Classification of Audiovisual Programmes.³⁰⁸

5.24.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 44. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	No.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Norwegian response to European Audiovisual Observatory standardised survey

5.24.2.1. VSP service

The EEA position note provides for the following definition:

Video-sharing platform means services whose main purpose (or essential functionality) is to a) offer programmes and user-generated videos to the public for information, entertainment and education, b) are offered through electronic communications networks and c) the organisation of content are determined by the service provider, in particular by displaying, tagging and sequencing the content.

Further definitions are expected as a result of the EEA process.

³⁰⁸https://www.medietilsynet.no/globalassets/aldersgrense-ikoner-og-veiledning-no-og-eng/200423-retningslinjer_aldersklassifisering_engelsk_pages.pdf.



5.24.2.2. VSP provider

There are no relevant definitions in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.). EEA process pending.

5.24.2.3. User-generated video

Section 3 of the Media Liability Act defines user-generated content as: “a statement published by a media user outside the editor’s management and control”.

Further definitions are expected as a result of the EEA process.

5.24.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret these concepts; EEA process pending.

5.24.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret this concept; EEA process pending.

5.24.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.



5.24.3.1. General provisions

Current regulation does not include VSPs. However, the Broadcasting Act includes several provisions covering audiovisual media services and video on demand (VOD), including provisions on advertising in children's programmes or advertising directed at children (section §3-1), hidden advertising/marketing (section §3-3), sponsorship (section §3-4), and product placement (section §3-6).

The Act relating to the protection of minors against harmful audiovisual programmes regulates content that may impair the physical, mental or moral development of minors, in both linear and on-demand audiovisual media services. Harmful content is defined in section 2 h) and seriously harmful content is defined in section 2 i). The Act applies to the making available of audiovisual programmes and related material to the general public through: a) television broadcasts and audiovisual on-demand media services covered by the Broadcasting Act, b) screening at a public gathering in Norway, including at a cinema or other screening facility, and c) making videograms available in Norway when the audiovisual programme is made available either by a company registered in Norway or one which has its business address in Norway, by a person who is a Norwegian citizen or domiciled in Norway, or when the decision to make it available is made in Norway. The Act furthermore states that an audiovisual programme cannot be made available without being given an age limit following the age classification system, and this age limit must be made available for the public in a clear and neutral manner. These provisions also cover videos posted by Norwegian YouTubers and vloggers on a Norwegian YouTube channel, however, not if the videos are accessed by friends and family only, or if the YouTuber/vlogger does not earn any income or receive any benefits to market products or services. Audiovisual programmes with seriously harmful content may not be broadcast on television, and the watershed, technical measures (PIN codes, passwords or other solutions) and content classification systems are used by the service providers.

Further, section 6 of the Media Liability Act regulates duties related to user-generated content. It states:

The editor must maintain a clear distinction between user-generated content and editorial content in the medium and state what content is user-generated.

If the medium has rules for user-generated content, the editor must provide information about the rules and how they are enforced.

The editor must facilitate the reporting of illegal user-generated content. If user-generated content is removed or access to the content is barred because it is considered illegal, the editor must, to the extent possible, notify the author of the content and inform him/her of opportunities to appeal.

Section 185 of the Penal Code regulates hate speech, while in Chapter 18, it further regulates terrorist acts and terrorism-related acts; section 134 deals with terrorist threats, section 136 concerns inciting terrorist acts, including recruiting and training for acts of terrorism. Section 309 prohibits the purchase of sexual services from minors, section 310



prohibits showing sexual abuse of a child or shows which sexualise children, and section 311 prohibits the depiction of sexual abuse of children or depictions which sexualise children. Finally, section 185 regulates racism and xenophobia. According to section 13 of the Act relating to Equality and Anti-Discrimination³⁰⁹ (LOV-2017-06-16-51), harassment on the basis of, e.g. gender, ethnicity, religion, age or belief are prohibited.

While the revised AVMSD is not yet implemented in Norwegian legislation, the rules on marketing (including advertising, sponsorship and product placement) in the Marketing Control Act apply to all marketing directed at consumers in Norway, including marketing posted on VSPs. Section 3 states that “[a]ll marketing shall be designed and presented in such a way that it is clear that it is marketing”. Furthermore, more detailed provisions on advertising, sponsorship and product placement for audiovisual media services (linear broadcasting and on-demand audiovisual media services) are stipulated in the Broadcasting Act Chapter 3 and the Broadcasting Regulations Chapter 3. Audiovisual media services breaking these rules risk having to pay a violation fee, a fine or they risk a ban on displaying advertising.

5.24.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret these concepts. EEA process pending.

5.24.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Please see under general provisions 5.24.3.1 and 5.24.3.2.

5.24.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Please see under 5.24.3.2.

³⁰⁹ <https://lovdata.no/pro/#document/NLE/lov/2017-06-16-51?searchResultContext=3322&rowNumber=1&totalHits=12>



5.24.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Please see under 5.24.3.2.

5.24.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Please see under 5.24.3.2.

5.24.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Please see under general provisions 5.24.3.1 and 5.24.3.2.

5.24.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Please see under 5.24.3.2.

It should be noted that Youtubers and vloggers sharing content which is accessible to anyone other than friends and family and receiving income or other benefits, must mark videos with age limits.

5.24.3.9. 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 – Article 28b (3) (h) AVMSD

Please see under 5.24.3.2.

It should be noted that parental control systems apply to audiovisual media services according to the Regulations on the protection of minors against harmful audiovisual programmes.

5.24.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Please see under 5.24.3.2.



5.24.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Please see under 5.24.3.2.

It should be noted that the Norwegian Media Authority also works to increase media literacy. The Authority conducts a survey every two years on critical media understanding in the population. Areas that are mapped include fake news, knowledge of the media's commercial pages, privacy, trust in the media, and understanding sources.

5.24.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Please see under 5.24.3.2.

5.24.3.13. Other relevant provisions related to the protection of minors

N/A.

5.24.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

The Broadcasting Act includes rules concerning the labelling of advertisements (sections 3-1 and 3-3), sponsorships (section 3-4), and product placements (sections 3-6 and 3-7), and these rules apply to those who post videos on their own YouTube channel (provided the channel is considered to be an on-demand audiovisual media service according to the definition in the Broadcasting Act, section 1-1 d)). Please see also under general provisions 5.24.3.1.

The Norwegian Media Authority has issued a guide for Youtubers and video bloggers about the labelling of advertising. The guidelines state:

If you produce videos that contain advertising and publish them on YouTube or other video-sharing platforms, you are obligated to label them. This applies if you earn money from or receive other benefits from presenting products or services in the videos. The viewers must be aware of which videos contain advertising so they know that someone wants to influence them to purchase something.

The Norwegian Consumer Authority has produced guidelines on marketing beauty products and treatments on social media, and also issued general guidelines on labelling of



advertising in social media.³¹⁰ These guidelines apply to Norwegians who publish commercial content on social media, such as on TikTok, Snapchat, Instagram or Facebook.

5.24.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

There is a general ban on advertising for alcohol and tobacco, according to section 9-2 of the Act on the sale of alcoholic beverages, as well as on the advertising and sponsorship of tobacco products, according to the Act relating to protection against tobacco damage. There is also a ban on advertising in children programmes and in programmes aimed at children, according to section 3-1 of the Broadcasting Act.

In Norway, a self-regulatory body – the Food and Drink Industry Professional Practices Committee (MFU), has been set up. The MFU³¹¹ ensures compliance and handles complaints based on the Code for marketing of food and drink aimed at children. The Code is accompanied by guidance.³¹²

5.24.3.16. Other relevant information

N/A.

5.24.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret these concepts. EEA process pending.

³¹⁰ [file:///C:/Users/uh18/Downloads/The-Consumer-Ombudsmans-guidance-on-labelling-advertising-in-social-media%20\(2\).pdf](file:///C:/Users/uh18/Downloads/The-Consumer-Ombudsmans-guidance-on-labelling-advertising-in-social-media%20(2).pdf).

³¹¹ <https://mfu.as/english/>.

³¹² <https://nye.mfu.as/guidance-on-the-code-for-marketing-of-food-and-drink-aimed-at-children/>.



5.24.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28b (7) of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to video-sharing platform providers (as required by Article 28b (8) of the AVMS Directive).

5.24.5.1. Regulatory body

The Norwegian Media Authority³¹³ is responsible for the supervision of regulations on advertising, sponsorship and product placement in audiovisual media services, age limits for audiovisual programmes, as well as provisions that aim to ensure that minors are not able to access seriously harmful content in audiovisual programmes. The Norwegian Consumer Authority³¹⁴ is responsible for supervising the Marketing Control Act. This regulation includes advertising in social media (blogs, Facebook, Instagram, Twitter and Snapchat) where primarily text or photos are used.

5.24.5.2. Existence of a registration/notification system

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on the existence of such systems. EEA process pending.

According to section 2-1 of the current Broadcasting Act, the duty to register or to apply for a licence only applies to broadcasting services.

5.24.5.3. Compliance, enforcement and sanctioning powers

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) about these powers. EEA process pending.

³¹³ <https://www.medietilsynet.no/en/about-medietilsynet/>.

³¹⁴ <https://www.forbrukertilsynet.no/english>.



5.24.5.4. Development of self- or co-regulatory codes or schemes

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) about these codes or schemes. EEA process pending.

In 2020, the Professional Committee for Influence Marketing was established by the Norwegian Advertisers' Association and the Norwegian Association of Media Companies. The Professional Committee for Influence Marketing intends to contribute to responsible practices for those who practice influencer marketing and to reduce body appearance pressure. Anyone can file a case for the Committee. Decisions are published on social media and in the daily press.

5.24.5.5. Out-of-court redress mechanisms for users

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on such mechanisms. EEA process pending.

5.24.5.6. Rights before a court for users

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on such rights. EEA process pending.

5.24.6. Studies, reports and research

- The Digital Services Act explained (Ytringsfrihetskommisjonen Digital Services Act forklart), 2021.³¹⁵
- Children's lives in front of, behind and on the screen – preliminary edition. Green paper. (NOU 2021: 3 Barneliv foran, bak og i skjermen – Foreløpig utgave).³¹⁶
- Guide for Youtubers and Video Bloggers about Aabelling of Advertisements, Fredrikstad: Medietilsynet.³¹⁷
- A study of cash flows in the value chain for Norwegian films and series (Utredning av pengestrømmene i verdikjeden for norske filmer og serier), Oslo: Menon 2018.³¹⁸

³¹⁵ <https://www.ykom.no/2021/03/03/digital-services-act-forklart/>.

³¹⁶ <https://www.regjeringen.no/no/dokumenter/nou-2021-3/id2838679/>.

³¹⁷ <https://www.medietilsynet.no/globalassets/engelsk-dokumenter-og-rapporter/engelsk-youtube-veileder.pdf>.

³¹⁸ <https://www.menon.no/wp-content/uploads/2018-5-Utredning-av-pengestr%C3%B8mmene-i-verdikjeden-for-norske-filmer-og-serier-2.pdf>.



- The availability of Norwegian films on VOD platforms (Norsk films tilgjengelighet på VOD-plattformer), Oslo: NFI 2017.³¹⁹
- How to protect Norwegian and European content in the future? (Hvordan ivareta norsk og europeisk innhold i fremtiden?), Oslo: NFI 2017.³²⁰

5.24.7. Data compilation

This factsheet is based on data compiled by Vilde Schanke Sundet, Researcher at the Department of Media and Communication, University of Oslo.

³¹⁹ <https://www.nfi.no/statistikk/statistikk-analyse-og-rapporter>.

³²⁰ <https://www.nfi.no/statistikk/statistikk-analyse-og-rapporter>.



5.25.PL -Poland – National legal summary³²¹

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing (VSPs) are to be transposed into the draft Broadcasting Act (Draft Law).

5.25.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- The Broadcasting Act of 29 December 1992, consolidated text (*Ustawa z dnia 29 grudnia 1992r.o radiofonii i telewizji, t.j. Dz.U. z 2020 r. poz. 805*).³²²
- The draft Act amending the Broadcasting Act and the Act on Cinematography, as submitted by the Government to the *Sejm* (lower chamber of the Polish Parliament), doc. 1340 (*Rządowy projekt ustawy o zmianie ustawy o radiofonii i telewizji oraz ustawy o kinematografii, druk 1340*).³²³

Secondary legislation:

- Regulation of the National Broadcasting Council of 6 July 2000 amending the Regulation concerning sponsorship of programmes and other broadcasts, with subsequent amendments (*Rozporządzenie Krajowej Rady Radiofonii i Telewizji z dnia 6 lipca 2000 r.w sprawie sposobu sponsorowania audycji lub innych przekazów, z późn zm*).³²⁴
- Regulation of the National Broadcasting Council of 30 June 2011 concerning detailed conditions of product placement (*Rozporządzenie Krajowej Rady Radiofonii i Telewizji z dnia 30 czerwca 2011 r. w sprawie szczegółowych warunków lokowania produktów*).³²⁵
- The draft Act amending the Broadcasting Act and the Act on Cinematography also provides for the adoption by KRRiT of a number of regulations concerning VSPs; Article 47m.8 (the manner in which information is presented on VSPs, including transparency of ownership), Article 47n.5 (a template of the VSP register and

³²¹ The factsheet on Poland incorporates feedback from the Strategy Department of the Krajowa Rada Radiofonii i Telewizji (National Broadcasting Council – KRRiT) during the checking round with national regulatory authorities.

³²² <https://www.gov.pl/web/krrit/ustawa-o-radiofonii-i-telewizji>.

³²³ <https://sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1340>.

³²⁴ <http://www.archiwum.krrit.gov.pl/en/for-broadcasters-and-operators/legal-regulations/>.

³²⁵ Ibidem.



notification template), Article 47p.2 (effective technical measures aimed at the protection of minors), Article 47p.3 (criteria for the qualification of content aimed at minors), Article 47r.2 (means of identification and display of commercial communications) and Article 47t.3 (notification of illegal content by the users).

5.25.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 45. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Polish response to European Audiovisual Observatory standardised survey

5.25.2.1. VSP service

Article 1.5.f of the draft Act amends Article 4 of the Broadcasting Act by adding Articles 22a–22d, and uses the definition of a VSP from the revised AVMSD as follows:

a video-sharing platform is a service provided by electronic means in the course of a business, where the principal purpose or function of that service or a separable part thereof is to provide, for informational, entertainment or educational purposes, to the general public, user-created video or other content for which the provider of the service has no editorial responsibility, but which the provider decides, including automatically or by algorithms, in particular by displaying, flagging and sequencing.

5.25.2.2. VSP provider

Article 1.5.f of the draft Act amends Article 4 of the Broadcasting Act by adding Articles 22a–22d, and uses the definition of a VSP provider from the revised AVMSD as follows:



the natural person, legal person or commercial partnership providing the video-sharing platform.

5.25.2.3. User-generated video

Article 1.5.f. of the draft Act amends Article 4 of the Broadcasting Act by adding Articles 22a–22d, and providing the definition of user-generated video from the revised AVMSD as follows:

a user-generated video is a set of moving images with or without sound, forming a separate entity, which has been created by a user and uploaded to a video-sharing platform by that user or another user.

5.25.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.25.2.5. “Essential functionality” of a VSP service

Article 1.3.a and b of the draft Act amends Article 2 of the Broadcasting Act by adding point 6a and new paragraph 3. The proposed Article 2.2.6a specifies:

[The Broadcasting Act shall not apply to:] electronically provided services enabling the sharing of content by their recipients (social networking sites), provided that their essential function is not the provision of user-created audiovisual programmes or videos.

The proposed Article 2.3. clarifies:

In assessing the essential function of the service referred to in paragraph (2) point 6a, account shall be taken of the relationship between the audiovisual content and the principal economic activity or activities provided by the service, the quantitative and qualitative importance of the audiovisual content to the service, the manner in which revenue is generated through the audiovisual content and the availability within the service of tools designed to increase the visibility or attractiveness of the audiovisual content.

Practical guidance relevant to both national regulatory authorities and service providers has been provided in the “Communication from the Commission Guidelines on the practical application of the essential functionality criterion of the definition of a ‘video-sharing platform service’ under the Audiovisual Media Services Directive 2020/C 223/02”.³²⁶

³²⁶ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0707\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0707(02)&from=EN).



5.25.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b.1 and 2 of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b.3. of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides other additional relevant information about the measures and concepts at stake.

5.25.3.1. General provisions

The proposed Chapter 6b of the Broadcasting Act stipulates the obligations related to VSP service providers, as required by the revised AVMSD, while Article 47o, introduced by means of Article 1.33 of the draft Act provides for obligations of VSPs as follows:

1. *It is prohibited to place on video-sharing platforms programmes, user-generated videos or other content*
 - 1) *threatening the physical, mental or moral development of minors, in particular containing pornographic content or gratuitous violence, without using effective technical measures as referred to in Article 47p.1;*
 - 2) *containing incitement to violence or hatred towards a group of persons due to sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, nationality, membership of a national minority, property, birth, disability, age or sexual orientation;*
 - 3) *containing content likely to facilitate the commission of a terrorist offence, pornographic content with the participation of minors, content inciting to insult a group of people or an individual due to their national, ethnic, racial, religious affiliation or irreligiosity.*
2. *The provider of a video-sharing platform is obliged to use measures to prevent the provision of the content referred to in paragraph 1.*



5.25.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in the draft Act, Article 1.33 introducing Article 47s stipulates that that VSP providers shall include all relevant mechanisms stemming from the revised AVMSD in their rules of provision of services:

The provider of a video-sharing platform shall specify in particular in the terms of provision of services by electronic means, notably:

- 1) information on the characteristics and detailed criteria for qualifying and marking programmes, user-generated videos and other transmissions, as well as models of appropriate graphic symbols, specified in the regulation issued pursuant to Article 47p.3;*
- 2) information on the regulation referred to in Article 47r.2 and, in the absence thereof, the rules for the inclusion of commercial communications in broadcasts, user-generated video and other communications posted on the video-sharing platform by users;*
- 3) the manner of reporting that content posted on the video-sharing platform violates the prohibition set out in Article 47o.1, and the procedure for investigating reports, including time limits and the manner of responding to reports made by users;*
- 4) criteria for assessing the compliance of broadcasts, user-created videos and other transmissions with Article 47o;*
- 5) information on the possibility of filing complaints against the decisions of the video-sharing platform provider referred to in Article 47u.1 and 2 and Article 47w, as well as information on other legal remedies available to users of video-sharing platforms against the decisions of the video-sharing platform provider;*
- 6) information on the scope and purpose of processing of personal data of users of the video-sharing platform.*

5.25.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 1.33 introducing Article 47t and Article 47r of the draft Act stipulate that:



Article 47t: The video-sharing platform provider shall provide transparent and user-friendly mechanisms for enabling users of the video-sharing platform to report that content posted on the video-sharing platform contravenes Article 47o.

(2) The provider of the video-sharing platform shall respond to users immediately, but no later than within 48 hours of the notification referred to in paragraph 1.

(3) The National Council may by regulation determine the manner of reporting that the content placed on the video-sharing platform violates Article 47o and the manner of responding to reports made by users, taking into account the need to provide users with easy access to the possibility of reporting and to maintain the speed of the procedure, taking into account technical possibilities and the specific nature of video-sharing platforms.

[...]

Article 47r.2 The National Council [KRRiT] may, by means of a regulation, determine the manner of separating and marking commercial messages in programmes, videos created by users and other messages placed on the video-sharing platform, before and after their completion, as well as commercial messages placed on the video-sharing platform but having no connection with programmes or videos created by users, guided by the protection of the interest of the audience and the independence of providers of video-sharing platforms and taking into account the development of advertising techniques and the specificity of the activity of providers of video-sharing platforms.

5.25.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, the draft Act in Article 1.33 introducing Article 47r.2 states:

2. The National Council [KRRiT] may, by means of a regulation, determine the manner of separating and marking commercial messages in programmes, videos created by users and other messages placed on the video-sharing platform, before and after their completion, as well as commercial messages placed on the video-sharing platform but having no connection with programmes or videos created by users, guided by the protection of the interest of the audience and the independence of providers of video-sharing platforms and taking into account the development of advertising techniques and the specificity of the activity of providers of video-sharing platforms.



5.25.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in the general provisions, the draft Act in Article 1.35 introducing Article 47t stipulates:

- 1. The video-sharing platform provider shall provide transparent and user-friendly mechanisms for enabling users of the video-sharing platform to report that content posted on the video-sharing platform contravenes Article 47o.*
- 2. The provider of the video-sharing platform shall respond to users immediately, but no later than within 48 hours of the notification referred to in paragraph 1.*
- 3. The National Council may by regulation determine the manner of reporting that the content placed on the video-sharing platform violates Article 47o and the manner of responding to reports made by users, taking into account the need to provide users with easy access to the possibility of reporting and to maintain the speed of the procedure, taking into account technical possibilities and the specific nature of video-sharing platforms.*

5.25.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the draft Act in Article 1.33 introducing Article 47u stipulates:

- 1. The provider of a video-sharing platform, after requesting the user to remove the unlawful content within a specified period of time, shall prevent access to the broadcasts, user-created videos or other content uploaded to the platform by the user:*
 - 1) threatening the physical, mental or moral development of minors, if the user of the video-sharing platform has not classified them in accordance with the provisions issued pursuant to Article 47p.3;*
 - 2) non-compliant with Article 47o.1.2 and 3;*
 - 3) containing commercial communications which do not comply with Article 16.1, Article 16b.1-3, Article. 16c.1, Article 17 and Article 17a or the provisions issued pursuant to art. 47r.2, and in the absence thereof, not marked in accordance with the regulations referred to in Article. 47s.*
- 2. The provider of a video-sharing platform may prevent a user from posting broadcasts, videos created by the user or other transmissions on the video-sharing platform for a period*



of up to three months in the event that the user has posted the broadcasts, videos created by the user or other transmissions referred to in paragraph 1 at least twice, despite the user's request to cease the infringement.

3. The provider of the video-sharing platform may indefinitely prevent a user from posting user-created broadcasts, videos or other transmissions on the video-sharing platform in the event of posting user-created broadcasts, videos or other transmissions referred to in Article 47o.1.3.

4. The decision of the provider of the video-sharing platform referred to in paragraphs 1 to 3 shall contain reasons and shall be communicated to the user without delay.

5. The decision of the video-sharing platform provider, referred to in paragraphs 1-3, is subject to a complaint by the user of the video-sharing platform to the National Council.

6. The Chairman of the National Council may, by way of the decision referred to in Article 10.4, order the provider of the video-sharing platform to:

- 1) prevent access to the broadcasts, user-created video or other transmissions that do not comply with Article 47 placed on that platform, or*
- 2) restore access to the broadcasts, user-created video or other transmissions placed on that platform by its user, or*
- 3) restore the possibility for the user of the video-sharing platform to place user-created video broadcasts or other transmissions on the video-sharing platform.*

7. In the case of the decision referred to in paragraph 6, the provisions of Article 10.3 shall not apply.

8. To the extent regulated in this chapter, the provisions of Article 14 of the Act of 18 July 2002 on the provision of services by electronic means shall not apply.

5.25.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in 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, the Draft Law, introducing Article 47p.1-2 of the Broadcasting Act stipulates:

- 1. The video-sharing platform provider shall:*
 - 1) set up and operate effective technical safeguards, including parental control systems or other appropriate measures, to protect minors from access to broadcasts, user-generated videos or other communications that threaten the physical, mental or moral development of minors, in particular those containing pornographic content or gratuitous violence;*



2) enable users of a video-sharing platform to qualify their uploaded broadcasts, user-generated videos or other communications as referred to in Article 47o.1.1 and to apply the technical safeguards referred to in point 1 to their uploaded broadcasts, user-generated videos or other communications.

2. The National Council, by means of regulation, may lay down specific requirements for effective technical protection or other appropriate measures to protect minors from watching broadcasts, user-created videos or other communications referred to in paragraph 1, on the grounds of the need to ensure effective protection of minors from harmful content, taking into account technical feasibility, the harmfulness of broadcasts, user-created videos or other communications to minors in particular age categories, and the specific characteristics of the video-sharing platforms.

Also, Article 1.33 introducing Article 47p.3 provides for the role of the regulatory authority in determining the relevant conditions, as follows:

3. The National Council shall, by regulation, determine the characteristics and detailed criteria for the qualification and labelling of programmes, user-generated video and other communications, as well as the designs of the relevant graphic symbols, taking into account the degree of harmfulness of programmes, videos and other communications to minors in the various age categories and the specificity of the video-sharing platforms.

5.25.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, please see under 5.25.3.7.

5.25.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 47p.1 stipulates:

1. The video-sharing platform provider shall:

- 1) set up and operate effective technical safeguards, including parental control systems or other appropriate measures, to protect minors from access to broadcasts, user-generated videos or other communications that threaten the physical, mental or moral development of minors, in particular those containing pornographic content or gratuitous violence;*
- 2) enable users of a video-sharing platform to qualify their uploaded broadcasts, user-generated videos or other communications as referred to in Article 47o.1.1 and to apply*



the technical safeguards referred to in point 1 to their uploaded broadcasts, user-generated videos or other communications.

2. The National Council, by means of regulation, may lay down specific requirements for effective technical protection or other appropriate measures to protect minors from watching broadcasts, user-created videos or other communications referred to in paragraph 1, on the grounds of the need to ensure effective protection of minors from harmful content, taking into account technical feasibility, the harmfulness of broadcasts, user-created videos or other communications to minors in particular age categories, and the specific characteristics of the video-sharing platforms.

5.25.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, in addition to the aforementioned provisions, Article 47w of the draft Act stipulates:

1. A dispute over the handling of the notification referred to in Article 47t.1 between the user of the video-sharing platform and the provider of the video-sharing platform may be concluded amicably through mediation.

2. A mediator may be a natural person having full capacity to perform acts in law, enjoying full public rights, having competence in the field of law and the media, entered in the list of mediators kept by the Chairman of the National Council.

3. The provisions on mediation in articles 183¹-183⁷ and 183¹¹-183¹⁵ of the Act - Code of Civil Procedure shall apply accordingly.

In addition, the current requirements of the Broadcasting Act, concerning the ban on advertising of alcohol and cigarettes, among others is applicable to VSPs as well.

Article 47r.1:

The provisions of Article 16.1, Article 16b.1-3, Article 16c.1, Article 17 and Article 17a shall apply mutatis mutandis to commercial communications placed on a video-sharing platform by its provider, as well as commercial communications promoted or sold by that provider.



5.25.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, please see 5.25.3.6.

5.25.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 47p.4 stipulates:

4. Personal data on minors collected or otherwise generated by video-sharing platform providers due to the implementation of Article 47o.1.1 and the provisions adopted pursuant to paragraph 2 may not be processed for commercial purposes, such as direct marketing, profiling, behavioural targeted advertising or other forms of commercial communication targeted at specific audiences selected by the provider and used for such purposes in the provision of that platform, other platforms or media services.

5.25.3.13. Other relevant provisions related to the protection of minors

N/A.

5.25.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

N/A.

5.25.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

Regulations concerning principles of advertising and teleshopping in radio and television programme services prohibit commercial communications for alcohol and also stipulate that the national regulatory authority can seek the opinion of the Health Minister in relation to types of foods or beverages containing ingredients of which excessive intake in the everyday diet is not recommended, etc.



5.25.3.16. Other relevant information

N/A.

5.25.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

No specific provision of the draft Act amending the Broadcasting Act and the Act on Cinematography deals with this issue.

5.25.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.25.5.1. Regulatory body

The competent regulatory body for VSPs will be the National Broadcasting Council (KRRiT).³²⁷

5.25.5.2. Existence of a registration/notification system

The proposed Article 47t.3 states that:

³²⁷ <https://www.gov.pl/web/krrit>.



3. *The National Council may by regulation determine the manner of reporting that the content placed on the video-sharing platform violates Article 47o and the manner of responding to reports made by users, taking into account the need to provide users with easy access to the possibility of reporting and to maintain the speed of the procedure, taking into account technical possibilities and the specific nature of video-sharing platforms.*

5.25.5.3. Compliance, enforcement and sanctioning powers

The proposed Article 53e of the Broadcasting Act as proposed by the draft Act stipulates the possibility for KRRiT to issue sanctions to VSP providers, as follows:

1. If the video-sharing platform provider violates the provisions of Article 47m.1-6, 47n.1-2, 47p.1, 47r.1, 47s, 47t.1-2 or the provisions adopted pursuant to Article 47n.8, Article 47p.2 and 3 Article 47r.2, Article 47t.3., or if the video-sharing platform carries broadcasts, videos created by users which do not comply with Article . 47o.1.2-3 or which are harmful for the physical, mental or moral development of minors not qualified in accordance with the regulation referred to in Article 47p.3, and within 14 days from the date of service the President of the National Council shall issue a decision imposing a fine for the violation of the above mentioned regulations. The Chairman of the National Council issues a decision to impose on the VSP provider a fine of up to twenty times the average monthly remuneration in the enterprises sector, including payments from profit, in the quarter preceding the issuance of the decision imposing the penalty, as published by the President of the Central Statistical Office in the Official Journal of the Republic of Poland "Monitor Polski".

5.25.5.4. Development of self- or co-regulatory codes or schemes

As regards audiovisual media services, a variety of self-regulatory codes have been agreed and they have proved to be effective.³²⁸ There is the potential for self- or co-regulatory codes to be agreed once the process of AVMSD transposition has been completed.

5.25.5.5. Out-of-court redress mechanisms for users

Article 1.33 of the draft Act introducing new Article 47w of the Broadcasting Act stipulates:

1. A dispute over the handling of the notification referred to in Article 47t between the user of the video-sharing platform and the provider of the video-sharing platform may be concluded amicably through mediation.

³²⁸ See the 2020 National Broadcasting Council Annual Report, pp. 36-40:
<https://www.gov.pl/attachment/025b3be1-dfea-4d50-8d22-36c54418403e>.



2. A mediator may be a natural person having full capacity to perform acts in law, enjoying full public rights, having competence in the field of law and the media, entered in the list of mediators kept by the Chairman of the National Council.

3. The provisions on mediation in articles 183¹-183⁷ and 183¹¹-183¹⁵ of the Act - Code of Civil Procedure shall apply accordingly.

5.25.5.6. Rights before a court for users

No specific provision of the Draft Law deals with this issue, but this does not prevent users from using regular court mechanisms.

5.25.6. Studies, reports and research

N/A.

5.25.7. Data compilation

This factsheet is based on data compiled by Aleksandra Suwała, LL.M., Attorney at Law.



5.26.PT – Portugal – National legal summary³²⁹

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) have been transposed into Law 74/2020 (the Law).

5.26.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Law 74/2020 (*Lei n.º 74/2020 de 19 de novembro – Transpõe para a ordem jurídica interna a Diretiva (UE) 2018/1808 do Parlamento Europeu e do Conselho, de 14 de novembro de 2018, alterando a Lei n.º 27/2007, de 30 de julho, que aprova a Lei da Televisão e dos Serviços Audiovisuais a Pedido, e a Lei n.º 55/2012, de 6 de setembro, relativa ao fomento, desenvolvimento e proteção da arte do cinema e das atividades cinematográficas e audiovisuais*).³³⁰

5.26.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

³²⁹ The factsheet on Portugal incorporates feedback received from Paulo Barreto and Joana Duarte at the Portuguese Regulatory Authority for the Media (ERC), during the checking round with the national regulatory authorities.

³³⁰ <https://dre.pt/web/guest/home/-/dre/148963298/details/maximized>.



Table 46. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	Yes.

Source: Portuguese response to European Audiovisual Observatory standardised survey

5.26.2.1. VSP service

Article 2.º, No. 1, paragraph aa) of the Law provides for the definition of a VSP service in a simplified wording from that provided for in the revised AVMSD:

A service which, under the scope of the Articles 56 and 57 of the Treaty on the Functioning of the European Union, in whole or in dissociated part, has as its main purpose or essential function the provision of programmes and/or services to the general public of user-generated videos, where

- i) their organisation is determined by the video-sharing platform provider, notably by automatic means or by algorithms, in particular through the presentation, identification and sequencing, but such providers do not exercise editorial responsibility on the programmes and/or videos generated by users;*
- ii) they are intended to train, inform or entertain; and*
- iii) they are broadcast over electronic communications networks within the meaning of Article 2(4) of the European Electronic Communications Code.*

5.26.2.2. VSP provider

The Law, in Article 2.º, No. 1, paragraph ee) provides for a simplified definition of the VSP provider: “A collective or individual person who provides a video-sharing platform service.”

5.26.2.3. User-generated video

The Law, in Article 2.º, No. 1, paragraph bb) defines user-generated video by transposing the text of the revised AVMSD verbatim, as follows:

A set of moving images, with or without sound, that: i) constitutes an autonomous element, regardless of its duration; ii) is created by one or more users; and iii) is uploaded to a video-sharing platform by the user who created it or by other users.



5.26.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.26.2.5. “Essential functionality” of a VSP service

Article 2, No. 3 introduces the following:

The provision of programmes and videos generated by users is considered to constitute an essential functionality of the social networking service if the audiovisual content is not merely accessory in relation to the activities of that social networking service, or if it does not constitute a minor part of these activities.

5.26.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites to violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.26.3.1. General provisions

Under the current legislation for audiovisual services, content inciting to violence or hatred is defined as “programming elements that spread, incite racial, religious, political or colour hatred generated by colour, ethnic or national origin, sex, sexual orientation or disability”. The Law, in Article 27.^o, No. 2, defines, in relation to audiovisual media services, content inciting to violence or hatred as:

programming elements that incite violence, hatred against groups of people or members of such groups on grounds of sex, race, colour or ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinions, belonging to a national minority, wealth, birth, disability, age, sexual orientation or nationality.



Regarding the protection of minors, the current legislation describes content which may impair the physical, mental or moral development (which is a new provision) of minors as that which contains pornography or gratuitous violence.

The Law provides for the obligations as stipulated by the AVMSD:

Article 69.^o-A

Without prejudice to Articles 12 to 16 of Law-Decree No. 7/2004, of 7 January, providers of video-sharing platforms take appropriate measures to protect:

- a) Minors and young people against programmes, user-generated videos and commercial communications which may impair their physical, mental or moral development;*
- b) The general public against programmes, user-generated videos and audiovisual commercial communications that contain incitement to violence or hatred against groups of people or members of those groups based on one of the reasons referred to in paragraph 2 of Article 27;*
- c) The general public against programmes, user-generated videos and audiovisual commercial communications with content the dissemination of which consists of an activity that constitutes a criminal offence, namely public incitement to commit terrorist offences, as provided for in Law No. 52 / 2003, of 22 August, offences related to child pornography, as provided for in Law No. 103/2015, of 24 August and in Article 176 of the Penal Code, and racist and xenophobic infractions.*

Paragraph c) of Article 69.^o-A of the Law, specifically targeting VSPs, includes terrorist acts, in addition to references to other content, and states the following:

Content the dissemination of which constitutes an activity which is a criminal offence such as

- Content publicly inciting to acts of terrorism; [...]*
- Offences related to child pornography [...], and racist and xenophobic violations.*

Furthermore, Article 69.^o-C, paragraph e) of the Law states that commercial communications must respect the restrictions concerning the protection of minors, namely through the introduction of a technical functionality that can prevent access to content that can harm their development, including pornography and gratuitous violence, and through a system of visual identification.

Finally, Article 69.^o -B, No. 1, paragraph j) relates to commercial communications and defines content which may impair the physical, mental or moral development of minors as that which directly incites minors to buy or rent products or services by taking advantage of their inexperience or credulity; that directly incites minors to persuade parents or other persons to buy products or services; that exploits the special trust minors have in parents, teachers or other persons; or that shows, without justifiable reason, minors in dangerous situations. The same article also states in paragraph g) that VSP providers must ensure that commercial audiovisual communications do not directly target children and young people when they refer to alcoholic beverages.



5.26.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, the Law, in Article 69.^o-C, paragraph a) stipulates that they should be included in terms and conditions.

5.26.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, the Law refers to this in part in the Article 69.^o-B, No. 2, as follows:

Suppliers of video-sharing platforms must take appropriate measures to ensure that audiovisual commercial communications transmitted through their services that are not promoted, sold or organised by them respect the provisions of the previous paragraph, and should include in the respective conditions of use the obligation for users to:

- a) Respect the rules in force regarding commercial communications, namely the provisions of the previous number;*
- b) Declaring the inclusion of audiovisual commercial communications in the videos generated by them.*

5.26.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, the Law, in Article 69.^o-C, paragraph b) states that providers must:

Provide a feature that allows users who upload videos generated by users to declare whether those videos contain audiovisual commercial communications, insofar as they can know it or can reasonably be expected to know it.



5.26.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the VSP provider, Article 69.^o-C, paragraph c) of the Law provides for the obligation of VSPs to:

Create and use transparent and easy-to-use mechanisms that allow the public of video-sharing platforms to report or flag, as well as classify the content referred to in Article 69.^o-A and in No. 1 of Article 69.^o-B.

5.26.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of video-sharing platforms what effect has been given to their reporting and flagging initiatives, the Law, in Article 69.^o-C, paragraph d) obliges VSPs to “create and manage systems through which it is explained to the VSP public the follow-up to reporting or flagging mentioned in the previous paragraph”.

5.26.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in 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, Article 69.^o-C, paragraph e) of the Law refers to this in part in Article 69.^o-C, paragraph d) (see under 5.26.3.5.).

5.26.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 69.^o-C refers to this (see under 5.26.3.5. and 5.25.3.7.).



5.26.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, the Law, in Article 69.^o-C, paragraph f) provides for the use of “[p]arental control systems that are under the control of end users with regard to content that may impair the physical, mental or moral development of minors”.

5.26.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, the Law, in Article 69.^o-C, paragraph g) obliges VSPs to:

Create and use transparent, easy-to-use and effective procedures for handling and resolving complaints submitted by the public to the VSP regarding the implementation of the measures referred to in paragraphs c) to f).

5.26.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 69.^o-C, paragraph h) of the Law stipulates that providers must foresee efficient measures and instruments in matters of media literacy and must raise public awareness.

5.26.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Article 93.^o-B of the Law states that any personal data of minors collected or generated by television programming operators, on-demand audiovisual service operators or providers of VSPs cannot be processed for commercial purposes, such as direct marketing, profiling or behaviour-oriented advertising.



5.26.3.13. Other relevant provisions related to the protection of minors

N/A.

5.26.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

The current media legislation states that the relevant provisions of the Advertising Code are applicable to audiovisual commercial communications, with the necessary adaptations. Article 41.^o -A, paragraph 8) of the Law prohibits the presentation during child programming of any kind of commercial message that may harm the physical or mental development of minors, namely the ones foreseen in Article 20.^o-A of the Advertising Code.

5.26.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

Article 69.^o-B, No. 1, paragraph g) of the Law states that commercial communications concerning alcoholic drinks on VSPs cannot directly target minors.

Article 20-A of the Advertising Code includes restrictions on the advertising of HFSS foods and beverages, which are prohibited

on television programme services and services of video-on-demand and on the radio in the 30 minutes before and after children's programmes, and television programmes that have a minimum of 25% of audiences under 16 years old, as well as the insertion of advertising in the respective breaks.

It is also forbidden “on the internet, through websites or social networks, as well as in mobile applications for devices that use the internet, when its contents are addressed to minors under 16 years of age”.

A definition of HFSS foods and beverages is provided by the aforementioned Article 20-B:

1 - Food and beverages of high energy value, content of salt, sugar, saturated fat acids and processed fat acids are those that contain a quantity of the aforementioned elements that compromises, according to available scientific knowledge, a varied, balanced and healthy diet.

2 - For the purposes foreseen in the previous number, the Directorate-General for Health sets by order, taking into account the recommendations of the World Health Organization and the European Union, the values that must be taken into account in the identification of high energy value, content of salt, sugar, saturated fat acids and processed fat acids.



5.26.3.16. Other relevant information

N/A.

5.26.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

No specific provision of the Law deals with this issue.

5.26.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.26.5.1. Regulatory body

The competent regulatory body is the Regulatory Authority for the Media (ERC).³³¹

5.26.5.2. Existence of a registration/notification system

The Law establishes that the ERC will also be responsible for VSPs, including the obligation to keep a list of VSPs on its website, as well as being responsible for the supervision and verification of compliance with all mechanisms implemented to follow the applicable

³³¹ <https://www.erc.pt/>.



obligations. The ERC shall also promote and incentivise the adoption of self- and co-regulatory mechanisms. VSP providers are obliged to inform the ERC if their offer falls under Portuguese jurisdiction. Relevant provisions include:

Article 3.º, No. 8

Video-sharing platforms must inform the ERC of any relevant fact that determines that it offers services under the jurisdiction of the Portuguese State (Article 3, No. 4). In case of any sort of conflict involving the Portuguese jurisdiction, the ERC is responsible for informing the competent government member so that the question can be directed to the European Commission.

5.26.5.3. Compliance, enforcement, and sanctioning powers

The Law, in Article 69.º-F, No. 1, states that regulations and arbitrators are subject to the ERC's approval unless the VSP provider adheres to an existing arbitration centre.

5.26.5.4. Development of self- or co-regulatory codes or schemes

There are still no self-regulatory or co-regulatory guidelines in regard to VSPs. In Portugal, there are a number of self-regulatory mechanisms, including the Code of Ethics for Journalists, several self-regulatory mechanisms for commercial communications, such as those resulting from signaling codes for the content of television broadcasts and mention of sponsorship and product placement, as well as the declaration of principles from the Portuguese media in relation to judicial processes and its journalistic coverage, subscribed to by the main television broadcasters and newspapers.

5.26.5.5. Out-of-court redress mechanisms for users

Since the Portuguese national legal framework establishes a system of arbitral tribunals in the Voluntary Arbitration Law, with a set of arbitration centres authorised by the government, the Law, in Article 69.º-F, No. 3, states that VSPs must provide users (and the public) with arbitration tribunals or other non-judicial mechanisms legally authorised for resolving disputes. It also stipulates that “[t]he costs of the created mechanisms are fully borne by the video-sharing platform suppliers, and can only be charged to the counterparty when this dispute is in bad faith”.

5.26.5.6. Rights before a court for users

Article 69.º-F, No. 5, of the Law states that resorting to arbitration tribunals or other non-judicial mechanisms legally authorised for resolving disputes does not impede resorting to regular courts.



5.26.6. Studies, reports and research

- University of Porto, Master Thesis: Legal problems of electronic video-sharing platforms: the creation of content on YouTube and its limits, 2019.³³²
- Telematics and Informatics Journal: Usage of video-sharing websites: Drivers and barriers, 2014.³³³

5.26.7. Data compilation

This factsheet is based on data compiled by Elsa Costa e Silva, Researcher – Communication and Society Research Centre (CSRC), University of Minho and Mariana Lameiras, Senior Academic Fellow – United Nations University Operating Unit on Policy-Driven Electronic Governance (UNU-EGOV).

³³² <https://repositorio-aberto.up.pt/bitstream/10216/125887/2/381751.pdf>.

³³³ <https://bit.ly/2EEcl9T>.



5.27.RO – Romania – National legal summary³³⁴

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are to be transposed into the draft Bill amending Audiovisual Law No. 504/2002 (Draft Bill).

5.27.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Draft Bill amending Audiovisual Law No. 504/2002 (*Lege pentru modificarea și completarea Legii nr. 504/2002 a audiovizualului și a Ordonanței Guvernului nr. 39/2005 privind cinematografia*).³³⁵
- Government Decree No. 39/2005 on Cinematography (*Ordonanța Guvernului nr. 39/2005 privind cinematografia*).³³⁶

5.27.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 47. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.

³³⁴ The factsheet on Romania incorporates feedback received from the National Audiovisual Council (CNA), during the checking round with the national regulatory authorities.

³³⁵ <http://www.cultura.ro/proiect-de-lege-10>.

³³⁶ <http://legislatie.just.ro/Public/DetaliiDocument/184479>.



“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Romanian response to European Audiovisual Observatory standardised survey

5.27.2.1. VSP service

Article 1.1. of the Draft Bill defines the term “video-sharing platform service” by transposing the text of the revised AVMSD verbatim, as follows:

video-sharing platform service – the service whose principal purpose or of a dissociable section thereof or an essential functionality of the service is to provide the general public with programmes, user-generated videos, or both, in order to inform, entertain or educate, for which the video-sharing platform provider does not have editorial responsibility, through electronic communications networks, as they are regulated by GEO No. 111/2011 on electronic communications, the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms, in particular by display, marking and sequencing.

5.27.2.2. VSP provider

Article 1.41 of the Draft Bill defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “video-sharing platform provider’ means the natural or legal person who provides a video-sharing platform service”.

5.27.2.3. User-generated video

Article 1.39 of the Draft Bill defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:

“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.

5.27.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.



5.27.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts.

5.27.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.27.3.1. General provisions

Article 40 of the current Audiovisual Law states that broadcasting “programmes that contain any form of incitement to hatred on grounds of race, religion, nationality, sex or sexual orientation” is forbidden, and the Draft Bill has retained this provision. Further, Article 95¹ of the current Audiovisual Law states that the National Audiovisual Council (CNA), the media regulator, can withdraw the broadcast licence of a media outlet or the right to provide a VOD (video on demand) service if its programmes are found to have incited hatred, violence, actions aimed at dismantling the state authorities or terrorist activities.

Article 39 of the Audiovisual Law states that airing television and radio programmes that can “gravely affect the physical, mental or moral development of minors, especially programmes that contain pornography or unjustified violence” is forbidden. The same Article states that such programmes can be aired if there are conditional access systems in place.

Article 17 of the Audiovisual Law states that the CNA is authorised to issue regulatory decisions regarding any breach of a series of norms, one of which concerns the protection of minors, the provision which is not changed by the Draft Bill.

According to Article 42⁷ of the Draft Bill, VSP providers are required to take appropriate measures to protect:



- a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development, in particular programmes that contain pornography or unjustified violence;
- 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 ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation or nationality;
- c) the general public from programmes, user-generated videos and audiovisual commercial communications containing content whose dissemination constitutes a public provocation to commit criminal offences under Law No. 535/2004 on preventing and combating terrorism, and under the amended Law No. 196/2003 on the prevention and combating of pornography, or crimes of a racist and xenophobic nature.

5.27.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, Article 42⁸(7)a) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows: “including and applying in the terms and conditions of the video-sharing platform services the requirements derived from the application of Article 42”.

5.27.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 42⁸(7)b) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows:

including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 29 (1) and (2) for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers.



5.27.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 42⁸(7)c) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows:

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.

5.27.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the VSP provider, Article 42⁸(7)d) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows:

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 Art. 42⁷ provided on its platform.

5.27.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 42⁸(7)e) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows:

establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d).



5.27.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 42⁸(7)f) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows: “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”.

5.27.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, Article 42⁸(7)g) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows: “establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in Art. 42⁷”.

5.27.3.9. 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 – Article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 42⁸(7)h) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows: “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”.

5.27.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 42⁸(7)i) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows:



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 points (d) to (h).

5.27.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Article 42⁸(7j) of the Draft Bill transposes the text of the revised AVMSD verbatim, as follows: “providing for effective media literacy measures and tools and raising users' awareness of those measures and tools”.

5.27.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, 42⁸(8) of the Draft Bill transposes in full the revised AVMSD, as follows:

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

5.27.3.13. Other relevant provisions related to the protection of minors

Article 39 of the Audiovisual Law states that airing television and radio programmes that can “gravely affect the physical, mental or moral development of minors, especially programmes that contain pornography or unjustified violence” is forbidden. The same Article states that such programmes can be aired if there are conditional access systems in place. The Draft Bill states that the types of programmes described above can be made available if all necessary measures are taken to ensure minors can't see or hear in normal conditions the content.

5.27.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

According to Article 29 of the current Audiovisual Law, audiovisual commercial communications must not cause any “moral, physical or mental damage” to minors, and especially must not encourage minors to buy a product or service or encourage minors to



convince their parents to buy goods or services advertised by broadcast outlets; such audiovisual commercial communications must not exploit the special trust that minors have in parents, teachers or other persons, or to show, without justification, minors in dangerous situations.

5.27.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications:

According to Article 29(4) of the current Audiovisual Law, audiovisual commercial communications for alcoholic products must not encourage the excessive consumption of these drinks and cannot target minors in particular. Also:

audiovisual media services providers are encouraged to develop codes of conduct regarding inappropriate audiovisual commercial communications, especially those accompanying or included in children's programmes, of foods and beverages containing substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt and sugar, that are not recommended in a balanced alimentary diet (Art. 29(8)).

In the Draft Bill, Article 42⁸(3) uses the provisions of the revised AVMSD as follows:

Regarding video-sharing platform services, the use of co-regulation and self-regulation through codes of conduct is encouraged in order to effectively reduce children's exposure to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fats, trans-fatty acids, salt or sodium and sugars, of which excessive intake in the overall diet is not recommended.

5.27.3.16. Other relevant information

N/A.

5.27.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.



The Draft Bill transposes the text of revised AVMSD in Article 42⁸(6) in this regard:

The measures mentioned in para. (1) and (2) are the responsibility of all video-sharing platform providers under Romanian jurisdiction and are established according to 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 be practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided.

5.27.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and video-sharing platform providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.27.5.1. Regulatory body

The competent regulatory body is the National Audiovisual Council (CNA).³³⁷

5.27.5.2. Existence of a registration/notification system

The newly published bill gives the CNA legal power to regulate VSPs in Romania. According to the provisions of Article 42⁶:

(1) The Council draws up and maintains an updated list of video-sharing platform providers established or considered to be established in Romania and specifies the criteria that formed the basis for establishing jurisdiction, according to the provisions of Art. 42⁵.

(2) The Council shall communicate to the European Commission the list mentioned in para (1), including any updates thereto.

(3) The Council shall inform the European Commission, without any delay, of any conflicts

³³⁷ <https://www.cna.ro/>.



of jurisdiction concerning the providers of video-sharing platforms, which could not be resolved by a valid agreement between Romania and another Member State of the European Union.

5.27.5.3. Compliance, enforcement and sanctioning powers

The Draft Bill, in Article 42.9(1) states:

1) If the content of a video-sharing platform violates the provisions of Art. 42⁵ and 42⁶ and no other effective means are available to put an end to or prohibit the infringement and to avoid the risk of serious harm to the collective interests of the public, the Council (CNA) may request:

- a) video-sharing platform providers to remove illegal content or restrict access to it or explicitly display a warning to users when accessing such content;*
- b) hosting service providers to remove, disable or restrict access to a video-sharing platform;*
- c) registry operators to remove the domain name of the video-sharing platform.*

(2) The Council (CNA) may request the video-sharing platform providers to take the measures provided in par. (1) lit. a) only on the basis of a reasoned decision. The decision must be sufficiently precise and duly reasoned, so as to enable the supplier to take an informed decision with all due diligence as to the action to be taken to comply with the notification received. The decision can be appealed to the administrative contentious court, under the conditions of the Administrative Contentious Law no. 554/2004, with subsequent amendments and completions.

(3) The Council (CNA) may request the hosting service providers and the registry operators to take the measures provided in par. (1) lit. b) and c) based on a reasoned decision that was not challenged according to the Law on Administrative Litigation No. 554/2004 or based on a final court decision.

(4) In the activity of supervision and control, the Council (CNA) may request the National Institute for Research and Development in Informatics, in the case of the register of domains and subdomains in the area «.ro», the transmission of data or information that may lead to the identification of persons providing an audiovisual media service, a video-sharing platform service or which uploads and generates video material on a sharing platform. The requested data shall be transmitted to the Council without delay in accordance with the legal provisions on the protection of personal data.

(5) The full mechanisms of the implementing measures will be established by the Council (CNA). These mechanisms should be easy to access and use and allow notifications to be transmitted by electronic means.”



5.27.5.4. Development of self- or co-regulatory codes or schemes

Article 42¹⁰ of the Draft Bill stipulates that the CNA encourages the use of co-regulation in implementing the new rules for VSPs.

5.27.5.5. Out-of-court redress mechanisms for users

No specific provision of the Draft Bill deals with this issue, but nothing prevents users from asserting their rights before a court.

5.27.5.6. Rights before a court for users

No specific provision of the Draft Bill deals with this issue, but nothing prevents users from asserting their right before a court.

5.27.6. Studies, reports and research

N/A.

5.27.7. Data compilation

This factsheet is based on data compiled by Marius Dragomir, Director of the Center for Media, Data & Society.



5.28.SE – Sweden – National legal summary³³⁸

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the Radio and Television Act (2010:696) (RTA) (Preparatory material: Government bill 2019/20:168, A Modernised Radio and Television Act).

5.28.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Radio and Television Act (2010:696) (*Radio- och tv-lag* (2010:696)).³³⁹
- Swedish Alcohol Act (2010:1622) (*Alkohollag* (2010:1622)).³⁴⁰

5.28.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 48. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.

³³⁸ The factsheet on Sweden incorporates feedback received from Rebecca Parman from the Swedish Press and Broadcasting Authority (MPRT), during the checking round with the national regulatory authorities.

³³⁹ https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696_sfs-2010-696.

³⁴⁰ https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/alkohollag-20101622_sfs-2010-1622.



“Essential functionality”	No.
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Source: Swedish response to European Audiovisual Observatory standardised survey

5.28.2.1. VSP service

Chapter 3, Article 1 of the RTA provides for the definition of a VSP service by transposing the text of the revised AVMSD almost verbatim, as follows:

A service, where the principal purpose of the service or an essential functionality of the service is devoted to providing television programmes or user-generated videos organised by the video-sharing platform provider, but where the provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks.

5.28.2.2. VSP provider

Chapter 3, Article 1 of the RTA defines the term “video-sharing platform provider”, without reference to a legal or natural person, as follows: “The provider of a video-sharing platform”.

5.28.2.3. User-generated video

The RTA, in Chapter 3, Article 1, provides for the definition of user-generated video, by transposing the text of the revised AVMSD verbatim, as follows: “A set of moving images with or without sound constituting an individual item that is created by a user and uploaded to a video-sharing platform by that user or any other user.”

5.28.2.4. “Principal purpose” or “dissociable section” of a VSP service

The definition is discussed in the preparatory materials but without providing further details. Reference is mainly made to the recitals of the AVMSD.

5.28.2.5. “Essential functionality” of a VSP service

The definition is discussed in the preparatory materials but without providing further details. Reference is mainly made to the recitals of the AVMSD.



5.28.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.28.3.1. General provisions

The Criminal Code provides for the unlawfulness of threats against another person or another person's property, liberty or peace. It also treats any incitement to commit a criminal act, whether transmitted orally or in a written document disseminated or made available for dissemination, or in some other communication to the public, and any other attempts at inducing others to commit a criminal act, etc. as a criminal offence. It also provides for criminal charges for acts, in a statement or other communication that is disseminated, which threatens or expresses contempt for a population group by allusion to various characteristics, such as race, colour, national or ethnic origin, etc. It further provides for the prohibition of child pornographic images.

Also, the Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime, refers to international treaties prohibiting these acts.

Chapter 9a, Article 3 of the RTA states that a provider of a VSP shall take appropriate measures to ensure that user-generated videos, television programmes and audiovisual commercial communications made available on the platform do not include content in breach of the aforementioned provisions in the Swedish Criminal Code and the aforementioned Act.

Relative to the protection of minors, Chapter 9a, Article 1 of the RTA provides for the term: "in-depth depictions of violence of a realistic nature or with pornographic images", as it is currently used for television programmes.

The provisions in Chapter 9a, Articles 1, 9 and 10 stipulate the following obligations in regard to the protection of minors:



A provider of a video-sharing platform shall take appropriate measures to ensure that user-generated videos, television programmes and audiovisual commercial communications with in-depth depictions of violence of a realistic nature or with pornographic images are not provided in such a way that there is a significant risk of children seeing them; unless it is nevertheless justifiable for special reasons.

(...)

A provider of a video-sharing platform may not interrupt user-generated videos or television programmes for advertisement if these videos or programmes are primarily aimed at children under the age of twelve.

The provider may also not provide advertisements immediately before or after user-generated videos or television programmes or a segment of such videos or programmes that are primarily aimed at children under the age of twelve.

(...)

A provider of a video-sharing platform may not, before, during, or after user-generated videos or television programmes, provide advertisements aimed at capturing the attention of children under the age of twelve.

In regard to commercial communications, the provisions in Chapter 9a, Articles 4-8 and 11-12 stipulate the following obligations:

Information regarding product placement

A provider of a video-sharing platform that enters into or facilitates agreements on product placement in user-generated videos or television programmes shall make sure to provide information about the existence of product placement in those videos or television programmes. The information shall be provided at the beginning and end of the video or television programme and before it resumes after a commercial break. This information shall solely consist of neutral information about the occurrence of product placement and of the product or service that has been placed in the video or programme.

Prohibition of product placement

A provider of a video-sharing platform shall not enter into or facilitate an agreement of product placement in user-generated videos or television programmes if:

- 1. the product placement relates to the goods and services listed in Chapter 6 Article 2 points 1–7 of the RTA; or*
- 2. the video or programme is primarily aimed at children under 12 years of age.*

Information regarding sponsorship

A provider of a video-sharing platform that enters into or facilitates a sponsorship agreement for user-generated videos or television programmes shall state who is sponsoring the video or programme. This information shall be provided at the beginning or end of the video or television programme.



Prohibition of and restrictions on sponsorship

The provisions on the prohibition of and restrictions on sponsorship in Chapter 7 Articles 2-3³⁴¹ of the RTA apply to a provider of a video-sharing platform that enters into or facilitates sponsorship agreements for user-generated videos or television programmes.

Advertising signature

A provider of a video-sharing platform that provides advertising shall ensure that a specific signature that clearly distinguishes the commercial advertising from other content is provided before and after each advertisement break. This signature must consist of sound or images. When providing advertising on a split screen, the signature must be constantly visible. Article 9 of the Swedish Marketing Act contains provisions on the identification of advertising.

Prohibition on advertisements for medical products

A provider of a video-sharing platform is not permitted to provide advertisements, before during or after user-generated videos or television programmes, for medical products that are only available after prescription.

Prohibition on marketing in other legislation

Provisions prohibiting marketing can also be found in the Swedish Alcohol Act, the Swedish Act on the Marketing of Infant Formulae and Follow-on Formulae, the Swedish Medicinal Products Act, the Swedish Gambling Act and the Swedish Act on Tobacco and Similar Products.

In addition, Chapter 9a, Article 13 of the RTA stipulates the following obligation:

Requirements for measures

A provider of a video-sharing platform shall take appropriate measures to ensure that users of their platform act in accordance with the provisions of Chapter 9a of the RTA and Chapter 7 Article 3 second paragraph of the Swedish Alcohol Act.

³⁴¹ Which include provisions regarding alcoholic beverages, gambling products and prescription drugs.



5.28.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to in section 1.1.3.1, the RTA does not include a list of the measures, but preparatory work for the RTA clarifies that the appropriate measures referred to in Chapter 9a shall consist of the measures listed in Article 28 b (3) of the revised AVMSD, as appropriate.

5.28.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Please see under 5.28..3.2.

5.28.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Please see under 5.28.3.2.

5.28.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Please see under 5.28.3.2.

5.28.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

Please see under 5.28.3.2.

5.28.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Please see under 5.28.3.2.



5.28.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

Please see under 5.28.3.2.

5.28.3.9. 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 – Article 28b (3) (h) AVMSD

Please see under 5.28.3.2.

5.28.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Please see under 5.28.3.2.

5.28.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Please see under 5.28.3.2.

5.28.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Chapter 9a, Article 2 of the RTA states:

Personal data collected or otherwise generated by providers of video-sharing platforms to meet the requirement for measures under Chapter 9a, Article 1 of the RTA may not be processed for commercial purposes.

5.28.3.13. Other relevant provisions related to the protection of minors

N/A.



5.28.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

N/A.

5.28.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The Swedish Alcohol Act stipulates measures relative to marketing of alcohol in Chapter 7, Article 1:

When marketing alcoholic beverages or alcoholic beverage-like preparations to consumers, particular moderation must be observed. Advertising or other marketing measures may not be intrusive, solicitous, or encourage the use of alcohol.

Marketing may not be explicitly aimed at or portray children or young people under the age of 25.

Chapter 7, Article 3 in the same law states:

When marketing alcoholic beverages or alcoholic beverage-like preparations to consumers, commercial advertisements may not be used in television broadcasts, pay-TV, or audio radio broadcasts.

A provider of a video-sharing platform may not provide such commercial advertisements as referred to in the first paragraph before, during, or after user-generated videos or television programmes on the platform.

There are no specific rules on the marketing of HFSS foods. However, the general rules on deceptive marketing are also applicable to HFSS foods.

5.28.3.16. Other relevant information

N/A.

5.28.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be



practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

No specific provision of the RTA deals with this issue, but it is described in further detail in the preparatory works, where the size of the VSP, the nature of the service and the content are mentioned as the relevant factors when deciding what is an “appropriate measure”.

5.28.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regard to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as to the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and video-sharing platform providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.28.5.1. Regulatory body

The competent regulatory body is primarily the Swedish Press and Broadcasting Authority (MPRT/SPBA³⁴²) but the Swedish Broadcasting Commission (an independent body within the SPBA), the Swedish Consumer Ombudsman and the Swedish Authority for Privacy Protection also have supervisory responsibilities (Chapter 16, Articles 2-4 a of the RTA).

5.28.5.2. Existence of a registration/notification system

A new obligation for providers of VSPs to register with the SPBA is included in Chapter 2, Article 2 of the RTA. The Authority already keeps a public database of registered media service providers. This register will also include providers of VSPs once the first provider has been registered.

³⁴² <https://www.mprt.se/en/>.



5.28.5.3. Compliance, enforcement and sanctioning powers

The SPBA may decide on orders necessary to ensure that a VSP provider complies with the provisions on appropriate measures in Chapter 9a, Articles 1, 3 and 13 of the RTA. The orders may be subject to a conditional fine. At the request of the SPBA, a VSP provider must provide the information needed for supervision.

The Swedish Broadcasting Commission shall, in the same way as for television programmes, exercise supervision over the provisions on product placement, sponsorship and advertising. Failure to comply with the provisions and conditions set out in these provisions may result in the imposition of a special fee.

The Consumer Ombudsman shall, in the same way as for television, exercise supervision with regard to the provisions on advertising and children, as well as the prohibition on advertisements for medical treatments, which are available only after prescription. An infringement shall be regarded as improper marketing in accordance with the Marketing Act.

5.28.5.4. Development of self- or co-regulatory codes or schemes

The MPRT has a general obligation to cooperate with other relevant authorities (e.g., The Swedish Media Council on media literacy and The Swedish Consumer Agency on market law obligations).

The MPRT is further tasked in the RTA with participating in co-regulation concerning requirements for “appropriate measures”. The government states in its bill that it is likely that very few platform providers will be covered by the Radio and Television Act. Therefore, there are currently limited opportunities for co-regulation in Sweden. The work at European level should be taken into account when co-regulating in Sweden.

5.28.5.5. Out-of-court redress mechanisms for users

The SPBA is tasked with the mission to start developing this mechanism.

5.28.5.6. Rights before a court for users

No specific provision of the RTA deals with this issue, but nothing prevents users from asserting their rights before a court.

5.28.6. Studies, reports and research

N/A.



5.28.7. Data compilation

This factsheet is based on data compiled by Daniel Westman, independent legal advisor and researcher.



5.29.SI – Slovenia – National legal summary³⁴³

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the Proposed Law Amending the Audiovisual Media Services Act (draft AVMS Law).

5.29.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Proposed Law Amending the Audiovisual Media Services Act (Predlog- Zakon o Spremembah in Dopolnitvah Zakona o Avdiovizualnih Medijskih Storitvah).³⁴⁴

5.29.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

Table 49. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.
VSP provider	Yes.
User-generated video	Yes.
“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

³⁴³ The factsheet on Slovenia incorporates feedback received from Igor Žabjek, Head of the Monitoring Department at the Agency for Communication Networks and Services of the Republic of Slovenia (AKOS), during the checking round with the national regulatory authorities.

³⁴⁴<https://imss.dz-rs.si/IMiS/ImisAdmin.nsf/ImisnetAgent?OpenAgent&2&DZ-MSS-01/19c437f29af596fdbf65146aa17d388eb4932666c9db28882bca03427b6cf433>.



Source: Slovenian response to European Audiovisual Observatory standardised survey

5.29.2.1. VSP service

Article 3 (2.a) of the draft AVMS Law provides for the definition of a VSP service by transposing the text of the revised AVMSD verbatim, whilst also making references to the EC guidelines on VSPs:³⁴⁵

Video-sharing platform service means a service or an integral part of a service whose main purpose or essential function is to provide user-generated programmes or videos for which the platform provider has no editorial responsibility to the general public for information, entertainment or education through electronic communications networks as defined in point (a) of Article 2 of Directive 2002/21/EC. The video-sharing platform provider organises programmes and videos by displaying, tagging, or sorting, which can also be done with automated tools or algorithms. In case of doubt as to whether the transmission of programmes or videos constitutes an essential function of the service, the guidelines of the European Commission governing the practical application of the essential function criterion to the services of video-sharing platforms shall be observed.

5.29.2.2. VSP provider

Article 3 (5.a) of the draft AVMS Law defines the term “video-sharing platform provider”, by transposing the revised AVMSD verbatim, as follows: “The provider of the video-sharing platform is a legal or natural person, which offers the service of a video-sharing platform.”

5.29.2.3. User-generated video

The draft AVMS Law, in Article 3 (3.a) provides for this definition by transposing the revised AVMSD verbatim, as follows:

User-generated video means a set of moving images with or without sound, representing an individual item irrespective of length created by the user and uploaded to the video-sharing platform by that or another user.

5.29.2.4. “Principal purpose” or “dissociable section” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts, except for references made to the aforementioned EC guidelines on VSPs. However, Article 3 (2.a) of the draft AVMS Law stipulates that in case of doubt as to whether the transmission of

³⁴⁵ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0707\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0707(02)&from=EN).



programmes or videos constitutes an essential function of the service, the guidelines of the European Commission governing the practical application of the essential function criterion to the services of VSPs shall be observed.

5.29.2.5. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, caselaw, etc.) on how to interpret these concepts except for the references made to the aforementioned EC guidelines on VSPs.

5.29.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations for these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section also provides for other additional relevant information about the measures and concepts at stake.

5.29.3.1. General provisions

Provisions relative to public incitement to hatred, violence or intolerance, as well as child pornography are to be found in the Criminal Code, Media Law, current AVMS Law, and draft AVMS Law. The draft AVMS Law prohibits such content, and references the Criminal Code, which under Article 110 states the following:

(1) Whoever incites commitment of criminal offences under Article 108 of this Penal Code and therefore propagates messages or makes them available to other persons in some other manner with the intention to promote terrorist criminal offences and thus causes danger that one or more such criminal offences would be committed, shall be sentenced to imprisonment between one and ten years.

(2) Whoever directly or indirectly publicly glorifies or advocates criminal offences under Article 108 or the criminal offence referred to in the preceding paragraph by, with the purpose under preceding paragraph, propagating messages or making them available to the



public and therefore cause danger that one or more such criminal offences would be committed, shall be punished in the same manner.

(3) Persecution for criminal offences under preceding paragraphs shall be initiated with the permission by the Minister of Justice.

In addition, regarding incitement to hatred, violence or intolerance, the Criminal Code (under Article 297) states (*inter alia*) the following:

(1) Whoever publicly provokes or stirs up ethnic, racial, religious or other hatred, strife or intolerance, or provokes any other inequality on the basis of physical or mental deficiencies or sexual orientation, shall be punished by imprisonment of up to two years.

(2) The same sentence shall be imposed on a person who publicly disseminates ideas on the supremacy of one race over another, or provides aid in any manner for racist activity or denies, diminishes the significance of, approves, disregards, makes fun of, or advocates genocide, holocaust, crimes against humanity, war crime, aggression, or other criminal offences against humanity.

(3) If the offence under preceding paragraphs has been committed by publication in mass media, the editor or the person acting as the editor shall be sentenced to the punishment, by imposing the punishment referred to in paragraphs 1 or 2 of this Article, except if it was a live broadcast and he was not able to prevent the actions referred to in the preceding paragraphs.

Article 9 of the draft AVMS Law stipulates:

The following is prohibited through audiovisual media services:

- incite violence or hatred against a group of persons or a member of such a group on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, minority, property, birth, disability, age, sexual orientation or nationality;*
- incite the commission of terrorist offences as provided for in the Criminal Code;*
- affect respect for human dignity.*

In the draft AVMS Law, under Article 38b, the obligations of VSP services stipulate:

1) Providers of video-sharing platforms under the jurisdiction of the Republic of Slovenia are obliged to take appropriate measures to protect:

- minors from programmes, videos and audiovisual commercial communications, that could harm their physical, mental or moral development;*
- the general public against programmes, videos and audiovisual commercial communications, encouraging violence or hatred towards groups of persons or members of such group on the basis of sex, race, colour, ethnic or social origin, genetic characteristics,*



language, religion or belief, political or other opinion, nationality, belonging to a minority, because of wealth, birth, disability, age or sexual orientation;
- *general public against programmes, videos and audiovisual communications which are criminal offences, namely: the criminal offence of incitement and public glorification of terrorist acts, the criminal offence of showing, producing, possessing and transmitting pornographic material or punishing acts of public incitement to hatred, violence and intolerance.*

5.29.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of VSP services the requirements referred to in Article 38b of the draft AVMS Law, Article 38d leaves it up to VSP providers to decide on which measures will be implemented, at the same time requiring services to establish rules prohibiting the publishing of videos that are in conflict with the above obligations (in relation to complaint procedures and the removal of illegal content).

5.29.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Article 38.č requires that VSPs ensure that the applicable laws are respected in the following manner:

(2) Providers of video-sharing platforms are obliged in accordance with their capabilities, to take appropriate measures to ensure that the audiovisual commercial messages that they do not market, sell or edit themselves meet the requirements of Articles 19 to 22 of this Act.

(4) In order to meet the requirements of this Article and to meet the requirements of the first paragraph of Article 38.b relating to audiovisual commercial communications, providers of video-sharing platforms shall choose appropriate measures according to the nature of the content concerned, the damage it may cause, the characteristics of the category of persons to be protected and the rights and legitimate interests of providers of video-sharing platforms, users who have created or uploaded content to the platform, and the general public interest. The measures must be feasible and proportionate, taking into account the scope of the video-sharing platform service and the nature of the services offered. The measures referred to in this Article may not lead to measures of prior control or filtering of the content when uploading to the platform, which are inconsistent with the law governing electronic commerce on the market.



(5) *The Agency shall assess the adequacy of the measures referred to in this Article.*

5.29.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

Regarding the measure consisting in 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, Article 38.d states:

(3) Providers of video-sharing platforms shall clearly inform users where user-generated programmes and videos contain audiovisual commercial communications, if such communications are reported. Platform providers shall provide a feature that allows users who upload videos to the platform, if they are aware of it or if they can reasonably be expected to be aware of it, to state whether these videos contain audiovisual commercial messages.

5.29.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content, paragraphs 2 and 3 of Article 38.b of the draft AVMS Law stipulates:

(2) Providers of video-sharing platforms shall formulate and make public rules setting out:

- a ban on publishing videos that are in conflict with the provisions of the previous paragraph;*
- the possibility of filing a report for violation of the above rules;*
- the procedure for dealing with reports of breaches of the rules;*
- measures to remove illegal content or stop its dissemination;*
- the procedure for dealing with appeals against the measures referred to in the previous indent.*

(3) The system for submitting the application referred to in the preceding paragraph must be transparent and user-friendly. The applicant must be given appropriate and timely explanation of how his/her appeal has been resolved.



- 5.29.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

N/A.

- 5.29.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Article 38.b (7) of the draft AVMS Law stipulates that:

(4) Measures to ensure compliance with the first indent of the first paragraph of this Article are in particular: setting up and operating a system to verify the age of users of video-sharing platforms.

- 5.29.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

N/A.

- 5.29.3.9. 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 – article 28b (3) (h) AVMSD

Regarding the measure consisting in 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, Article 38.b (7) of the draft AVMS Law states:

Measures to ensure compliance with the first indent of the first paragraph of this Article are in particular:

- providing a system of parental control managed by the end user.

- 5.29.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP



provider in relation to the implementation of the measures referred to in general provisions, Article 38.b (2) and (3) stipulates that:

(2) Providers of video-sharing platforms shall formulate and make public rules setting out:

- a ban on publishing videos that are in conflict with the provisions of the previous paragraph;*
- the possibility of filing a report for violation of the above rules;*
- the procedure for dealing with reports of breaches of the rules;*
- measures to remove illegal content or stop its dissemination;*
- the procedure for dealing with appeals against the measures referred to in the previous indent.*

(3) The system for submitting the application referred to in the previous paragraph must be transparent and user-friendly. The applicant must be given appropriate and timely explanation of how his/her appeal has been resolved.

(6) The Agency shall assess the adequacy of the measures referred to in this Article.

5.29.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, media literacy is not specifically addressed in the context of obligations on VSPs.

The law contains a general Article regarding media literacy under Article 11a:

Article 11a (media literacy)

(1) The Republic of Slovenia shall support measures intended to promote, encourage and develop media literacy with funds from the budget of the ministry responsible for the media. The procedures for the selection of measures are carried out in accordance with the law governing the realisation of the public interest in the field of culture.

(2) In order to protect end users of electronic media, the Agency shall make the population of the Republic of Slovenia aware of the competent and responsible use of electronic media by implementing media literacy projects in the areas it regulates within its competences.



5.29.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, the draft AVMS Law, in Article 38.b (8) states:

Personal data of minors collected or otherwise created by video-sharing platform providers on the basis of the measures referred to in this Article may be processed only for the purpose of verifying the age of the users.

5.29.3.13. Other relevant provisions related to the protection of minors

The secondary legislative General Act on the protection of children and minors in television programming and on-demand audiovisual media services defines the programme content that could seriously harm the physical, mental or moral development of children and minors and the programme content that may harm the development of children and minors, and determines the level of protection for the programme content defined in the Act and guidelines for its broadcasting, including categorisation obligations.

Article 42 of the draft AVMS law stipulates that:

B) Within six months after adoption of the Act, AKOS shall harmonise the following general acts with the provisions of this Act:

...

- General Act on the Protection of Children and Minors in Audiovisual Media Services against potentially harmful content;

...

C) Within six months after adoption of the Act, the ministry responsible for the media shall harmonise the following rules with the provisions of this Act:

- Rules on determining the acoustic and visual warning and visual symbol for programme content that is not suitable for children and minors.

5.29.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

The current AVMS Law, in Article 21, provides for the protection of minors relative to audiovisual commercial communications which must not cause physical, mental or moral harm to minors. Very detailed rules on this are provided in the Advertising Industry's self-regulatory code.



5.29.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The current AVMS Law briefly addresses alcohol, by stipulating it to be regulated by special regulations, unless otherwise provided by this Act. It is currently regulated under a health law, which is rather out of date, so this aspect of the revised AVMSD has not yet been considered.

The current AVMS Law also introduced a self-regulatory system for audiovisual media service providers regarding HFSS foods. The draft AVMS Law has not strengthened these provisions, and it does not appear that it has been made applicable to VSPs. One change was made to this Article updating it to include "audiovisual media services". In addition, Article 38.č (1) of the draft states that the relevant provisions shall apply to audiovisual commercial communications which are marketed, sold or edited by providers of video exchange platforms themselves and that VSP providers will, in accordance with their capabilities, take appropriate measures to ensure that audiovisual commercial communications that they do not market, sell or edit meet the requirements of the law.

5.29.3.16. Other relevant information

Article 42 of the draft AVMS Law stipulates that:

B) Within six months after adoption of the Act, AKOS shall harmonise the following general acts with the provisions of this Act:

...

- General Act on Product Placement and Sponsorship.

5.29.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

This section aims at identifying how this is implemented in the national legislation.

No specific provision of the draft AVM Law deals with this issue.



5.29.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regard to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and VSP providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.29.5.1. Regulatory body

The competent regulatory body for VSPs is the Agency for Communication Networks and Services (AKOS).³⁴⁶

5.29.5.2. Existence of a registration/notification system

Under current legislation, AKOS has the mandate to receive notifications of video-on-demand services, and the draft AVMS Law introduces these obligations for VSPs as well, including provision of relevant information, and a 14-day notification of changes to services.

5.29.5.3. Compliance, enforcement, and sanctioning powers

AKOS shall, under Article 38.b of the draft AVM Law, assess the adequacy of the measures relating to VSPs. As regards sanctions, these are applied by AKOS and detailed in Articles 43 to 45 of the current legislation and include financial fines.

Article 42 stipulates that:

B) Within six months after adoption of the Act, AKOS shall harmonise the following general acts with the provisions of this Act:

- General Act on the Notification of Audiovisual Media Services on Demand;

...

- Methodology for the supervision of audiovisual media services and radio channels.

³⁴⁶ <https://www.akos-rs.si/>.



C) *Within six months after adoption of the Act, the ministry responsible for the media shall harmonise the following rules with the provisions of this Act:*

- *Rules on the method of calculating payments on the basis of a TV licence and on-demand service notification.*

5.29.5.4. Development of self- or co-regulatory codes or schemes

In Slovenia, there are no co-regulatory measures relevant to the protection of minors, or to VSPs, but self-regulatory measures, such as those introduced by the Slovenian Advertising Chamber, cover a range of issues, including the protection of minors, etc.

5.29.5.5. Out-of-court redress mechanisms for users

The draft AVM Law, in Article 38.c, stipulates the measures relative to out-of-court dispute resolution between users and providers of VSPs, by providing the possibility for users to file complaints with AKOS and the relevant procedure:

- (1) In the event that the provider of the video exchange platform does not satisfy the user's complaint regarding the measures referred to in the first to fifth paragraphs of the previous Article, the user has the right to submit a proposal for resolving the dispute to the Agency.*
- (2) The settlement of disputes referred to in the first paragraph of this Article shall be without prejudice to any jurisdiction. If, during the dispute settlement proceedings before the Agency, any party initiates litigation before the competent court or withdraws the claim, the dispute settlement proceedings before the Agency shall be terminated.*
- (3) The user may submit a proposal for resolving the dispute before the Agency no later than 15 days from the day when he received a reply from the provider of video-sharing platforms that he would not uphold his complaint. If the provider of the video-sharing platform does not respond to the complaint within the prescribed time limit, the complaint shall be deemed not to have been upheld.*
- (4) The Agency shall endeavour to resolve the dispute in the mediation procedure by assisting the parties in finding an amicable solution by using mediation techniques. If an amicable settlement of the dispute between the user and the provider of the video-sharing platform is not possible, the Agency shall continue the procedure and decide on the dispute by an administrative decision.*
- (5) The Agency shall issue the decision referred to in the preceding paragraph as soon as possible, but no later than two months from the finding that an amicable settlement of the dispute is not possible.*
- (6) If the Agency sends a proposal for an amicable settlement prepared by the other party to the applicant for a dispute resolution, but the applicant does not respond to it within the set deadline, it shall be deemed that he has agreed to the offered solution and withdrawn the request.*



(7) If the applicant for the settlement of the dispute does not appear at the oral hearing, even though he was duly summoned to it, and does not respond to the received minutes of the oral hearing within the specified time limit, he shall be deemed to have withdrawn the request. The Agency must warn the applicant for the settlement of the dispute of the consequences which will befall him if he does not reply to the proposed minutes.

(8) In the dispute resolution procedure, the Agency shall apply the provisions of the law governing the general administrative procedure, unless otherwise provided by this Act. The Agency shall specify the rules for transmission in a general act.

(9) In the dispute settlement procedure, each party shall bear its own costs of the proceedings.

Article 42 of the draft AVMS Law stipulates that:

A) Within six months after adoption of the Act, AKOS shall adopt the following general acts:

...

- General Act on out-of-court settlement of disputes between VSP users and VSP providers referred to in the eighth paragraph of Article 38.c of the Act.

5.29.5.6. Rights before a court for users

In Article 38.c of the draft AVMS Law, the rights of users before the court are taken into account, as well:

(2) The settlement of disputes referred to in the first paragraph of this Article shall be without prejudice to any jurisdiction. If, during the dispute settlement proceedings before the Agency, any party initiates litigation before the competent court or withdraws the claim, the dispute settlement proceedings before the Agency shall be terminated.

5.29.6. Studies, reports and research

N/A.

5.29.7. Data compilation

This factsheet is based on data compiled by Deirdre Kevin, Consultant with Commsol Ltd.



5.30.SK – Slovakia – National legal summary³⁴⁷

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing (VSPs) are to be transposed into Act No. 308/2000 Coll. on broadcasting and retransmission (the BT Act).

5.30.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:³⁴⁸

- Act No. 308/2000 Coll. on broadcasting and retransmission (308 ZÁKON zo 14. septembra 2000 o vysielaní a retransmisii a o zmene zákona č. 195/2000 Z. z. o telekomunikáciách).³⁴⁹

Secondary legislation:

- Decree of the Ministry of Culture of the Slovak Republic setting out details on a single labelling system for audiovisual works, audio recordings of artistic performances, multimedia works, programmes and other components of programme services, and on the means of its application (*Vyhláška č. 589/2007 Z. z., ktorou sa ustanovujú podrobnosti o jednotnom systéme označovania audiovizuálnych diel, zvukových záznamov umeleckých výkonov, multimedialných diel, programov alebo iných zložiek programovej služby a spôsobe jeho uplatňovania*).³⁵⁰

5.30.2. Definitions and scope

This section aims at identifying the relevant definitions related to VSPs stemming from the transposition of the revised AVMSD as well as elements of interpretation of the main concepts present in those definitions.

³⁴⁷ The factsheet on Slovakia incorporates the feedback received from the Office of the Slovak Council for Broadcasting and Retransmission during the checking round with the national regulatory authorities."

³⁴⁸ The draft legislation has not been presented yet.

³⁴⁹ <https://www.wipo.int/edocs/lexdocs/laws/en/sk/sk086en.pdf>.

³⁵⁰ <https://www.law-reg.org/legislativa/predpisy/vyhlasaka-c-589-2007-z-z-ktorou-sa-ustanovuju-podrobnosti-o-jednotnom-systeme-oznacovania-audiovizualnych-diel-zvukovych-zaznamov-umeleckych-vykonov-multimedialnych-diel-programov-alebo-inych-zloziek-programovej-sluzby-a-sposobe-jeho-uplatnovania>.



Table 50. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	TBC
VSP provider	TBC
User-generated video	TBC
“Principal purpose”	TBC
“Dissociable section”	TBC
“Essential functionality”	TBC

Source: Slovakian response to European Audiovisual Observatory standardised survey

5.30.2.1. VSP service

The definition of a VSP service will be part of the legislation currently under preparation, where it is expected that the wording of the provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.2.2. VSP provider

The definition of a VSP provider will be part of the legislation currently under preparation, where it is expected that the wording of the provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.2.3. User-generated video

The definition of user-generated video will be part of the legislation currently under preparation, where it is expected that the wording of the provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.2.4. “Principal purpose” or “dissociable section” of a VSP service

The definition of principal purpose will be part of the legislation currently under preparation, where it is expected that the wording of the provision will closely follow the wording of the relevant Article of the AVMS Directive.



5.30.2.5. “Essential functionality” of a VSP service

The definition of essential functionality will be part of the legislation currently under preparation, where it is expected that the wording of the provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.3. Obligations and measures imposed on VSP providers

The revised AVMSD provides for the extension of its scope to cover VSPs. It introduces obligations on these players to take appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development; to protect the general public from illegal content and content that incites violence or hatred; and to respect certain obligations around commercial communications (Article 28b (1) and (2) of the revised AVMSD). To fulfil these obligations, member states are required to ensure compliance with the measures listed in Article 28b (3) of the revised AVMSD.

This section aims at identifying the obligations and measures imposed on VSP providers under national legislation in order to ensure their compliance with those obligations.

When available, this section will also provide for other additional relevant information about the measures and concepts at stake.

5.30.3.1. General provisions

Legislation defining the various forms of violence or hatred includes the Constitution and the Criminal Code, which provide for a more detailed specification of crimes inciting violence or hatred, extremism, etc. The current BT Act also contains the legal definition of content inciting violence or hatred and specifications of measures for the protection of human dignity and humanity in individual audiovisual media content, the protection of minors and commercial communications. Further, the decree of the Ministry of Culture of the Slovak Republic sets out details of a single labelling system for audiovisual works, including for content which incites violence or hatred.

Obligations for VSPs will be part of the legislation currently under preparation, where it is expected that the wording of the provision will closely follow the wording of the relevant Article of the AVMS Directive.



5.30.3.2. Adapting terms and conditions of the VSP service to include those obligations – Article 28b (3) (a) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.3.3. Adapting terms and conditions to include obligations regarding commercial communications that are not marketed, sold or arranged by the VSP provider – Article 28b (3) (b) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.3.4. Having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications – Article 28b (3) (c) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.3.5. Establishing and operating transparent and user-friendly mechanisms for users to report or flag content – Article 28b (3) (d) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.3.6. Establishing and operating systems through which VSP providers explain to users what effect has been given to reporting and flagging – Article 28 (b) (3) (e) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.3.7. Establishing and operating age verification systems for users with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (f) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.



5.30.3.8. Establishing and operating easy-to-use systems allowing users to rate the content – Article 28b (3) (g) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.3.9. 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 – Article 28b (3) (h) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.3.10. Establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints – Article 28b (3) (i) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.3.11. Providing for effective media literacy measures and tools and raising users' awareness of those measures and tools – Article 28b (3) (j) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive. Users' awareness and media literacy measures are addressed in the National concept of child protection in the digital space³⁵¹ and the Action plan for 2020–2021 based on this National concept of child protection in the digital space.³⁵²

5.30.3.12. Forbidding the processing of personal data of minors for commercial purposes – Article 28b (3) AVMSD

The wording of the relevant provision will closely follow the wording of the relevant Article of the AVMS Directive.

³⁵¹ https://detstvobeznasilia.gov.sk/web_data/content/upload/subsubsub/2/narodna-koncepcia-ochrany-deti-v-digitalnom-priestore-1.pdf.

³⁵² https://detstvobeznasilia.gov.sk/web_data/content/upload/subsubsub/2/akcny-plan-na-roky-2020-2021-1.pdf.



5.30.3.13. Other relevant provisions related to the protection of minors

The legal definition and provisions relative to content that may disrupt the physical, mental or moral development of minors are also contained in the media legislation, in the BT Act, the decree of the Ministry of Culture setting out details of a single labelling system, the Act on Audiovision, the directive on the prevention and solution of bullying of children and pupils in schools and school facilities, as well as the Criminal Code.

5.30.3.14. Other relevant provisions related to commercial communications which may impair the physical, mental or moral development of minors

The wording of the relevant provisions will closely follow the wording of the relevant Articles of the AVMS Directive.

Numerous provisions of the current BT Act establish obligations for AVMS providers regarding the protection of minors.

5.30.3.15. Other relevant provisions related to minors' exposure to advertising for alcohol products and HFSS foods (high fat, sugar and salt foods) in commercial communications

The wording of the relevant provisions will closely follow the wording of the relevant Article of the AVMS Directive.

The relevant provisions of the current BT Act establish obligations for AVMSD providers regarding the protection of minors and alcohol.

At present, there is no legislative regulation that would prohibit the advertising of HFSS products. The only exception concerns schools, for which the Ministry of Education has issued a written instruction not to allow the advertising of HFSS products in school buildings. Monitoring of compliance with this guideline is the responsibility of the Public Health Office.

5.30.3.16. Other relevant information

N/A.



5.30.4. Practicability of the measures imposed on VSP providers

Article 28b (3) of the revised AVMS Directive does not only provide for the list of measures which are detailed under the previous section. Paying attention to the principle of proportionality, it also states that the measures imposed on VSP providers should be practicable and proportionate and take into account criteria such as the size of the VSP service and the nature of the service, as well as the nature of the content.

No details are available at the moment.

5.30.5. Regulation and enforcement

This section aims at identifying which body is in charge of regulatory and enforcement powers with regards to VSPs, as well as the scope of its activities with regards to such platforms. These relate to registration/notification systems of VSPs with the relevant national regulatory bodies, as well as with the development of self- or co-regulatory codes and schemes (as encouraged by Article 4a of the AVMS Directive), provisions related to out-of-court redress mechanisms for the settlement of disputes between users and video-sharing platform providers (as envisaged by Article 28(b)7 of the AVMS Directive) and provisions related to how users can assert their rights before a court in relation to VSP providers (as required by Article 28(b)8 of the AVMS Directive).

5.30.5.1. Regulatory body

The competent regulatory body for VSPs is the Council for Broadcasting and Retransmission (RVR).³⁵³ The RVR (possibly under a new name), in cooperation with the Ministry of Culture of the Slovak Republic has the mandate to establish the obligations for VSPs. In this context, a working group for the recodification of the legal regulation of audiovisual media services operates within the Ministry.

5.30.5.2. Existence of a registration/notification system

There will be a registration and notification system introduced in the new legislation. The relevant authority tasked with overseeing the system will be the RVR.

³⁵³ <http://rvr.sk/>.



5.30.5.3. Compliance, enforcement and sanctioning powers

The new legislation will assign this role to the RVR.

5.30.5.4. Development of self- or co-regulatory codes or schemes

The new legislation will address the question of developing self- or co-regulatory codes for VSPs. No details are available yet. The RVR will be an active part of the co-regulatory scheme.

5.30.5.5. Out-of-court redress mechanisms for users

The wording of the relevant provisions will closely follow the wording of the relevant Article of the AVMS Directive.

5.30.5.6. Rights before a court for users

N/A.

5.30.6. Studies, reports and research

N/A.

5.30.7. Data compilation

This factsheet is based on data compiled by Norbert Vrabec, Associate Professor at the Faculty of Mass Media Communication, University of Ss. Cyril and Methodius in Trnava.

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