



5. National legal summaries

5.1. AT – Austria – National legal summary⁹⁵

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).⁹⁶
- Law on the establishment of a communications authority Austria (KommAustria-Gesetz, KommAustria-G).⁹⁷
- Law on the Austrian Broadcasting Corporation (ORF-Gesetz, ORF-G).⁹⁸

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.

Table 21. Definition of the main concepts related to VSPs

Concept	Existence of a definition
VSP service	Yes.

⁹⁵ 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 2021 and 2022 checking rounds with the national media regulatory authorities.

⁹⁶ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412>.

⁹⁷ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001213>.

⁹⁸ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785>.



Concept	Existence of a definition
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 5.1.3.1, 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)⁹⁹ as well as to related offers from third parties.

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

⁹⁹ 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.



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.¹⁰⁰

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 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.

¹⁰⁰ https://www.rtr.at/medien/wer_wir_sind/KommAustria/KommAustria.de.html.



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.