



## 5.9. EE – Estonia – National legal summary<sup>156</sup>

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

### 5.9.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Media Services Act (Meediateenuste seadus<sup>157</sup>).

### 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 VSPs<sup>158</sup>**

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

Source: Estonian response to European Audiovisual Observatory standardised survey

<sup>156</sup> 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 2021 and 2022 checking rounds with the national media regulatory authorities.

<sup>157</sup> <https://www.riigiteataja.ee/akt/106012011001?leiaKehtiv> English version available at: <https://www.riigiteataja.ee/en/eli/ee/514032022003/consolide/current>.

<sup>158</sup> 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 Act, which is also part of the legislation.



#### 5.9.2.1. VSP service

The Act defines the term “video-sharing platform” as an information society service and includes the wording of the revised AVMSD, as follows:

*A video-sharing platform is an information society service within the meaning of the Information Society Services Act or of a dissociable section thereof, where the main purpose of or an essential functionality of the service is to provide, to the general public through electronic communications networks, informative, educational or entertaining programmes, user-generated videos or both, for which the video-sharing platform operator does not have editorial responsibility and the organisation of which is determined by the video-sharing platform operator, including by automatic means or algorithms in particular by displaying, tagging and sequencing of content.*

#### 5.9.2.2. VSP provider

The draft AVMS Law defines the term “video-sharing platform operator” by using the wording of the revised AVMSD, as follows:

*“A video-sharing platform operator may be a legal or natural person.”*

#### 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:

*“A user-generated video means a time-limited set of moving images with or without sound, irrespective of its length, that is created by user and uploaded to video-sharing platform by that user or any other 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.

The Explanatory Memorandum defines some provisions on principal purpose:

*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.*



#### 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 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 Act provides a number of obligations for broadcasters and on-demand services related to the prohibition of incitement to hatred, violence or discrimination on the grounds of any group identity, including nationality, sex, race, colour, ethnic or social origin, genetic characteristics, language, religion, political beliefs, belonging to a national minority, financial status, birth, disability, age or sexual orientation, where it poses a threat to life, health or property of a person. 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.

#### 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 5.9.3.1, Article 19<sup>1</sup> of the Act introduces these obligations in the following manner:



*Article 19<sup>1</sup>. Protection of minors and ensuring morality and legality in the provision of video-sharing platform services*

*(1) The video-sharing platform operator prescribes in the terms of use of the service that in the video-sharing platform it is prohibited to transmit such programmes, user-generated videos or commercial communication which:*

- 1) incite to hatred, violence or discrimination on the grounds of any group identity, including nationality, sex, race, colour, ethnic or social origin, genetic characteristics, language, religion, political beliefs, belonging to a national minority, financial status, birth, disability, age or sexual orientation, where it poses a threat to the life, health or property of a person;*
- 2) incite for violation of law; or*
- 3) depict child pornography.*

*(2) The video-sharing platform operator prescribes in the terms of use of the service that at the beginning of such programme, user-generated video or commercial communication that may impair the physical, mental or moral development of minors, a warning must be presented in a manner understandable to the viewer stating that the subsequent programme is unsuitable for minors, and a relevant symbol about the unsuitability of this programme to minors or some age groups of minors must be seen on the screen during the whole programme, video or commercial communication.*

#### 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 31<sup>1</sup> of the Act provides that:

*(1) The operator of a video-sharing platform prescribes in the terms of use of the service that commercial communications transmitted on the video-sharing platform must comply with the requirements established in this Act for commercial communications, including sponsorship and product placement, and 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 Act, in Article 31<sup>1</sup> (2) and (3), introduces these obligations, as follows:

*(2) The operator of a video-sharing platform ensures the existence of a technical application by means of which the users uploading videos are able to inform whether the video contains audiovisual commercial communications, in so far as they are aware thereof or can reasonably be expected to be aware thereof.*

*(3) The operator of a video-sharing platform explicitly informs the users if programmes and user-generated videos contain audiovisual commercial communications, provided that the operator is aware of commercial communications.*

#### 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 19<sup>1</sup> (3) of the Act 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 commercial communications:

*(3) The video-sharing platform operator must ensure the technical application by means of which service users can easily notify the operator of the programmes specified in subsections 1 and 2 of this section, user-generated videos and commercial communications.*

#### 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 Act. However, Article 19<sup>1</sup> (6) (7) 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 19<sup>1</sup> (5) of the Act addresses the “protection of minors and



ensuring morality and legality in the provision of video-sharing platform” by providing the following obligations:

*(5) If the video-sharing platform operator is aware of a programme, user-generated video or commercial communication that may impair the physical, mental or moral development of minors, the operator immediately adds a warning and symbol pursuant to subsection 2 of this section to the programme, video or commercial communication in the absence thereof, or ensures that this programme, user-generated video or commercial communication is received by means of personal identification codes or other appropriate technical solutions only in a manner that would not normally be accessible to a minor.*

#### 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 19<sup>1</sup> (3) of the Act apply (as seen under 5.9.3.5.).

#### 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 19<sup>1</sup> (5) of the Act 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 19<sup>1</sup> (6) of the Act stipulates:

*(6) The video-sharing platform operator establishes a procedure for the transparent, easy-to-use and effective processing and resolution of complaints filed against the operator by users of service 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 Act.

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 19<sup>2</sup> of the Act states:

*The media service provider and the VSP operator must not process personal data of minors collected or otherwise obtained in the course of using technical measures specified in subsections 19 (5) and 19<sup>1</sup> (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 Act 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).<sup>159</sup>

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<sup>159</sup> <https://www.ttja.ee/et>.





#### 5.9.5.2. Existence of a registration/notification system

The Act, 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 provider's name, web page and contact person, and an indication of conditions required by the law. 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

ECTRA is granted supervision over compliance with the Act, except for the requirements provided for in Articles 15 and 19<sup>2</sup> of the Act. Further, Article 55 provides for specific measures of state supervision, as follows:

*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, 32, 50 and 51 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.

The Act provides for obligations on VSPs, as follows:

*Article 27. Code of conduct for transmission of audiovisual commercial communication in children's programmes and user-generated videos targeted at children.*

*(1) Persons engaged in the field of media services and video-sharing activities may establish a code of conduct by means of self-regulation with regard to inappropriate audiovisual commercial communications transmitted in or during children's programmes or user-generated videos targeted at children, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt, sodium and sugar, the excessive intake of which is not recommended for children.*

*(2) If persons operating in the field of media services and video-sharing have not established the code of conduct referred to in subsection (1) of this section by self-regulation or it has not proved to be sufficiently effective, the requirements for audiovisual commercial communications introducing food and drinks in or during the children's programmes or user-generated videos targeting children are established by a regulation of the minister in charge of the policy sector.*



The Act 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 1 April 2023 if persons operating in the field of media and VSP services have not developed a self-regulatory code of conduct by 1 October 2022.

Also, Article 22 of the Act refers to self-regulatory mechanisms in this respect:

*22. Self-regulation.*

*(1) Persons involved in the pursuit of the media service and video-sharing activity may create on their own initiative a system the parties to which define voluntarily common recommendations and rules, establishing content requirements as a code of conduct with the purpose of regulating the activities in the area and identify good and bad practice.*

*(2) The code of conduct specified in subsection 1 of this section must be widely accepted among main interest groups, describe its objectives clearly and unambiguously, provide for regular, transparent and independent monitoring of the compliance with the established objectives, and set out the procedures for compliance with the established rules and the liability of the parties for violation of the rules.*

#### 5.9.5.5. Out-of-court redress mechanisms for users

Article 19<sup>1</sup> (7) of the Act stipulates:

*(7) If a user of a video-sharing platform finds that the user's rights are violated upon implementation of subsection 4 or 5 of this section, the user has the right to file a complaint with the Consumer Protection and Technical Regulatory Authority. The complaint is resolved pursuant to the procedure provided for in § 561 of this Act.*

Furthermore, 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 this 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 Act deals with this issue, but nothing prevents users from asserting their rights before a court.



## 5.9.6. Studies, reports and research

- 2019 Ministry of Culture study on the situation and trends in media policy.<sup>160</sup>

## 5.9.7. Data compilation

This factsheet is based on data compiled by Dr. Andres Jõesaar, Associate Professor at Tallinn University.

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<sup>160</sup> [https://www.kul.ee/sites/kulminn/files/2019\\_meediapoliitika\\_olukord\\_arengusuunad\\_aruanne.pdf](https://www.kul.ee/sites/kulminn/files/2019_meediapoliitika_olukord_arengusuunad_aruanne.pdf).