



5.12.FR – France – National legal summary¹⁸²

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are 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:

- 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).¹⁸³
- 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).¹⁸⁴
- 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).¹⁸⁵
- Decree n° 2021-1922, 30 december 2021 implementing Law n°86-107, 30 September 1986 on freedom of communication and fixing general principles

¹⁸² The factsheet on France incorporates the feedback received from Raphaël Honoré and Lucile Petit, Conseil supérieur de l'audiovisuel (CSA), during the 2021 and 2022 checking rounds with the national media regulatory authorities.

¹⁸³ <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/2021-01-11/>.

¹⁸⁴ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000346165/2020-10-03/>

¹⁸⁵ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042439054>.



about commercial communications on VSP (Décret n° 2021-1922 du 30 décembre 2021 pris pour l'application de l'article 60 de la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication et fixant les principes généraux applicables aux communications commerciales audiovisuelles fournies sur les plateformes de partage de vidéos)¹⁸⁶.

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.*

¹⁸⁶ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044792286>.



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 amended Audiovisual Law mentions “user-generated content”, but provides 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 Rights¹⁸⁷ 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 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 *Autorité publique française de régulation de la communication audiovisuelle et numérique* (Arcom), 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.

The new Decree n° 2021-1922 stipulates that commercial communications on VSP must be easily recognisable (Article 3), must not be surreptitious (Article 4) or subliminal (Article 5). Article 6, furthermore, specifies that commercial communications:

- shall not affect human dignity and must respect the image of women;
- shall not promote or discriminate on sex, ethnic or racial origins, nationality, religion or belief, handicap, age, sexual orientation or gender identity;
- shall not encourage behaviour prejudicial to health or to safety;
- must not encourage behaviour seriously detrimental to the protection of the environment;

Commercial communications available on VSP must not (Article 7) cause physical, mental or moral detriment to minors. Therefore, they shall not directly exhort minors to buy 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.

¹⁸⁷https://fra.europa.eu/en/eu-charter/article/21-non-discrimination?utm_content=buffer87a6d&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.



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 5.12.3.1, 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 Arcom 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 Arcom 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 Arcom 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 Arcom.

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 Arcom.

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 Arcom 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 Arcom.



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 Arcom 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 Arcom.

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 Arcom 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 Decree n° 2021-1922 stipulates that commercial communications must not bring any physical, mental or moral prejudice to minors (Article 7 of the Decree), 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 Arcom 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.

There is a charter of the regulatory authority signed on 30 January 2020 applying to television, radio and the digital industry, that has not yet been signed by any major player in the digital industry. The charter incorporates the new Article 14 of the 1986 Audiovisual Law, its purpose being to “*reduce exposition of children to commercial communications with 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 intakes in the overall diet are not recommended*”. The charter is evaluated by the regulator each year. It does not provide for any sanctions in case of non-compliance by a signatory.

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

As of 1 January 2022, the competent regulatory body is *Autorité publique française de régulation de la communication audiovisuelle et numérique - Arcom*¹⁸⁸, the new national media regulatory authority created by merging the former audiovisual media regulator CSA with HADOPI (High Authority for the dissemination of works and the protection of rights on the internet) under the amended Audiovisual Law.

5.12.5.2. Existence of a registration/notification system

The Arcom 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 Arcom 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

¹⁸⁸ <https://www.arcom.fr/>.



of the Audiovisual Law) of the Ordinance, it will have to ensure that VSPs implement all the measures envisaged in the draft. The Arcom 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 Arcom 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 Arcom decree for the implementation of such powers is awaited.

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

The Arcom encourages the elaboration of codes of good administrative behaviour by VSPs. For now, the Ordinance envisages four codes of conduct related to VSPs: Article 22 of the Ordinance (modifying Article 61 of the Audiovisual Law) – the Arcom 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 Arcom 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 Arcom 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 Arcom promotes the adoption by video-sharing platform services of the charters provided for in article 4 of law n° 2020-1266 of 19 October 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.

Under Article 14 of the 1986 Audiovisual Law (as amended by Law n° 2021-1104 of 22 August 2021 about climate disruption), ARCOM must now promote a code of conduct whose purpose is to reduce commercial communications for goods or services with a negative effect on the environment, in particular in terms of greenhouse gas emissions, damage to biodiversity and use of natural resources.



5.12.5.5. Out-of-court redress mechanisms for users

The Arcom 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 Arcom 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

- Marc Le Roy: “Le nouveau droit des plateformes de partage de vidéosharing”, 2021.¹⁸⁹
- Loïc Peyen: “La publicité, l’argument environnemental et la loi Climat et Résilience : halte au greenwashing?”, 2021.¹⁹⁰
- Laurent Carrié: “Enfant influenceur: le contrôle parental sous contrôle de l’administration, du juge, des plateformes de partage de vidéos, du CSA ...et de l’enfant”.¹⁹¹

5.12.7. Data compilation

This factsheet is based on data compiled by Marc Le Roy, PhD in Law.

¹⁸⁹<https://www.legipresse.com/011-51181-le-nouveau-droit-des-plateformes-de-partage-de-videos.html>.

¹⁹⁰<https://www.lexiskiosque.fr/catalog/jcp-a/jcp-a/n38-2021>.

¹⁹¹<https://www.legipresse.com/011-51014-enfant-influenceur-le-contrôle-parental-sous-contrôle-de-ladministration-du-juge-des-plateformes-de-partage-de-vidéos-du-csa-et-de-lenfant.html>.