



5.14.HR – Croatia – National legal summary¹⁹⁶

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) were transposed into the Electronic Media Act in October 2021.

5.14.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Electronic Media Act (Official Gazette 111/21) (Zakon o elektroničkim medijima NN 111/21).¹⁹⁷
- Media Act (Official Gazette 59/04, 84/11 i 84/13)¹⁹⁸
- Electronic Commerce Act (Zakon o elektroničkoj trgovini).¹⁹⁹
- Criminal Code (Official Gazette 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19)²⁰⁰

5.14.1. 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.

¹⁹⁶ The factsheet on Croatia incorporates feedback received from Sanja Pančić from the Agency for Electronic Media (AEM) during the 2021 and 2022 checking rounds with the national media regulatory authorities.

¹⁹⁷ https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html.

¹⁹⁸ https://narodne-novine.nn.hr/clanci/sluzbeni/2004_05_59_1324.html.

¹⁹⁹ https://narodne-novine.nn.hr/clanci/sluzbeni/2003_10_173_2504.html.

²⁰⁰ https://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html.



“Principal purpose”	No.
“Dissociable section”	No.
“Essential functionality”	No.

Source: Croatian response to European Audiovisual Observatory standardised survey

5.14.2.1. VSP service

Article 3(1)37 of the 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.

5.14.2.2. VSP provider

Article 3(1)29 of the Electronic Media Act provides for the definition of a VSP provider as follows:

“Video-sharing platform provider” is legal or natural person that provides video-sharing platform service.

5.14.2.3. User-generated video

Article 3(1)39 of the 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.

5.14.2.4. “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 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.

5.14.3.1. 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),²⁰¹ 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),²⁰² the Electronic Commerce Act and the 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 Electronic Media Act. Specifically, Article 96 (1)-(3) provides for mechanisms stemming from the wording of revised AVMSD:

²⁰¹ https://narodne-novine.nn.hr/clanci/sluzbeni/1997_10_110_1668.html.

²⁰² https://narodne-novine.nn.hr/clanci/sluzbeni/2004_05_59_1324.html.



(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 24 of this Act;*
- 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 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 21 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 21 from paragraph 1 to 8 of this Act.

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 5.15.3.1, Article 96 (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.*



5.14.3.3. 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 96 (7)2 of the 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 21 paragraphs 1 to 8 of this Act for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers.

5.14.3.4. 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 96 (7)3 of the 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.

5.14.3.5. 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 video-sharing platform provider, Article 96 (7)4 of the 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.



5.14.3.6. 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 video-sharing platform providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 96 (7)5 of the 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.

5.14.3.7. 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 96 (7)6 of the 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.

5.14.3.8. 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 96 (7)7 of the 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.

5.14.3.9. 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 96 (7)8 of the 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.

5.14.3.10. 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 96 (7)9 of the 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.

5.14.3.11. 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 96 (7)10 of the 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.

5.14.3.12. 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 96 (8) of the 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.



5.14.3.13. Other relevant provisions related to the protection of minors

A number of obligations set forth in Article 24 (2)-(5) of the 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.

5.14.3.14. 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 21 of the Electronic Media Act, with a number of provisions related to a range of criteria.

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

Legal obligation with regards to minors' exposure to advertising for alcohol products in commercial communications on VSPs refers to Article 21 paragraph 6 of the 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 96 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 12 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.

5.14.3.16. 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 96 (6) of the 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 provisions of legislation that regulates electronic commerce.

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 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).



5.14.5.1. Regulatory body

The competent regulatory body is the Electronic Media Council (CEM)²⁰³ that manages the Agency for Electronic Media and carries out the duties of a regulatory body in the area of electronic media.

5.14.5.2. Existence of a registration/notification system

Regarding the registration of VSPs, Article 6 of the 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.

(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 95 (5) stipulates:

(5) 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 100 (2) of the 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.

²⁰³ <https://www.aem.hr/>.



5.14.5.3. Compliance, enforcement and sanctioning powers

Article 96 (9) and (10) of the 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 98 further stipulates the enforcement and sanctioning mechanism for the CEM, in terms of financial fines for a series of offences.

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

Article 12 of the 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 and/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:

- 1. be such that they are accepted by the main stakeholders;*
- 2. clearly and unambiguously set out their objectives;*
- 3. provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at;*
- 4. provide for effective enforcement including effective and proportionate sanctions.*

(3) In drafting code of conduct from paragraph (1) of this Article media service providers, providers of electronic publications and video-sharing platform providers can, if needed, cooperate with other sectors like industries, commerce, professional and consumer protection associations and other legal persons.

(4) Co-regulatory codes of conduct shall be authorized by Council and published on their website.

(5) Established codes of conduct by the European union that are published shall not affect implementation of national codes of conduct.

Article 96 (5) of the Act further stipulates the encouragement of these mechanisms for VSPs:

(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 12 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.

5.14.5.5. Out-of-court redress mechanisms for users

No specific provision of the Electronic Media Act deals with this issue.

5.14.5.6. Rights before a court for users

No specific provision of the Electronic Media Act deals with this issue, but nothing prevents users from asserting their rights 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 Hrvoje Lisičar, Associate Professor, Faculty of Law, University of Zagreb.