



5.15.HU – Hungary – National legal summary²⁰⁴

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) have been transposed into the Act on Media Services and on the Mass Media (in 2019) and the Act on Electronic Commerce and on Information Society Services (in 2020).

5.15.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Act on Media Services and on the Mass Media²⁰⁵ (2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról).²⁰⁶
- Act on Electronic Commerce and on Information Society Services²⁰⁷ (2001. évi CVIII. Törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről).²⁰⁸
- Act on the Basic Requirements and Certain Restrictions of Commercial Advertising²⁰⁹ (2008. évi XLVIII. Törvény a gazdasági reklámtevékenység alapvető feltételeiről és egyes korlátairól).²¹⁰
- Criminal Code²¹¹ (2012. évi C. törvény a Büntető Törvénykönyvről).²¹²

²⁰⁴ The factsheet on Hungary incorporates the feedback received from György Ocskó, International Legal Advisor at the National Media and Infocommunicaitons Authority (NMHH), during the 2021 and 2022 checking rounds with the national media regulatory authorities.

²⁰⁵ http://english.nmhh.hu/document/106487/act_clxxx_on_media_services_and_mass_media.pdf.

²⁰⁶ <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>.

²⁰⁷ http://nmhh.hu/document/213838/act_cviii_of_2001.pdf.

²⁰⁸ <https://net.jogtar.hu/jogszabaly?docid=a0100108.tv>.

²⁰⁹ <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.viewFile&lawID=26&languageID=EN>.

²¹⁰ <https://net.jogtar.hu/jogszabaly?docid=a0800048.tv>.

²¹¹ https://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf.

²¹² <https://net.jogtar.hu/jogszabaly?docid=a1200100.tv>.



5.15.2. Definitions and scope

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

Table 35. Definition of the main concepts related to VSPs

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

Source: Hungarian response to European Audiovisual Observatory standardised survey

5.15.2.1. VSP service

Article 203 (71a) of the Act on Media Services and on the Mass Media defines the term “video-sharing platform service” by expanding the definition provided by the revised AVMSD in terms of determining that this type of service is commercial in its nature and is performed on a regular basis for economic purposes, as follows:

an economic service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, pursued commercially on [the VSP provider’s] own account – performed on a regular basis under economic exposure with a view to making a profit –, where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.

5.15.2.2. VSP provider

Article 203 (71b) of the Act on Media Services and on the Mass Media defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows: “the natural or legal person who provides a video-sharing platform service”.



5.15.2.3. User-generated video

Article 203 (10a) of the Act on Media Services and on the Mass Media defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:

a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user.

Also, Article 3.3 of the Code of Ethics adopted by the Association of Hungarian Content Providers (MTE)²¹³ defines the term “user-generated content” as follows:

Information represented with the help of technologies provided by the Content Provider, on platforms belonging to the Content Provider, created by any user or group of users, qualifies as user-generated content – irrespective of whether the Content Provider claims for itself the right of subsequent correction (moderation) of such contents.

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

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

5.15.2.6. “Essential functionality” of a VSP service

There are no details in the primary legislation or in other texts (secondary legislation, by-laws, recommendations, case law, etc.) on how to interpret this concept.

5.15.3. Obligations and measures imposed on VSP providers

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

²¹³ <http://mte.hu/etikai-kodex/>.



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

5.15.3.1. General provisions

The obligations stemming from Article 28b (1) and (2) of the revised AVMSD in terms of protecting the general public and, in particular, minors from certain content are transposed into Section 15/D of the Act on Electronic Commerce and on Information Society Services as follows:

(1) In the interest of protection of viewers, video-sharing platform providers shall implement the measures and technological solutions provided for in Section 15/F if:

a) any programme, user-generated video provided to the general public by the video-sharing platform provider, commercial communications marketed, sold or arranged by the video-sharing platform provider or others (hereinafter referred to as “content”) may impair the physical, mental, spiritual or moral development of minors;

b) any content provided to the general public by the video-sharing platform provider is contrary to human dignity, and may contain facilities for inciting violence or hatred directed against peoples, nations, national, ethnic, linguistic and other minorities, or any majority or religious community, or any member thereof, for belonging to such group;

c) the content may constitute the commission of a crime or abetting the commission of a crime, in particular if it may contain facilities for abetting the commission of a terrorist act, incitement against a community, open denial of Nazi crimes and communist crimes, and/or for the sharing, distribution or transmission of child pornography content; or

d) the commercial communication broadcast by the user of video-sharing platform service does not comply with the requirements laid down in Subsections (1)-(7) of Section 20 of Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content (hereinafter referred to as the “Press Act”) or Section 24 of the Media Act.

(2) Commercial communications marketed, sold or arranged by video-sharing platform providers must comply with the requirements laid down in Subsections (1)-(7) of Section 20 of the Press Act or Section 24 of the Media Act.

(3) Video-sharing platform providers shall provide viewers with clear information on programmes containing commercial communication and on user-generated videos for which they made a statement under Paragraph b) of Section 15/G, or where the video-sharing platform provider is aware that it contains a commercial communication.

(4) Where any content provided to the general public by a video-sharing platform provider infringes the right of the right-holder referred to in Subsection (1) of Section 13 therein provided for, the right-holder in question may call upon the video-sharing platform provider to remove the infringing content. The notice and the procedure shall be governed by Subsections (1)-(12) of Section 13.



(5) Where any content provided to the general public by a video-sharing platform provider infringes the right of the minor right-holder referred to in Subsection (13) of Section 13 therein provided for, the minor right-holder, or his or her legal representative if the minor is of limited legal capacity, may call upon the video-sharing platform provider to remove the content alleged to violate the personality rights of the minor right-holder. The notice and the procedure shall be governed by Subsection (13)-(15) of Section 13.

(6) For the purposes of applying Section 7, video-sharing platform providers shall be subject to the provisions of Section 10 applicable to intermediary service providers specified in Subparagraph lc) of Paragraph l) of Section 2. This provision shall be without prejudice to the obligations of video-sharing platform providers set out in Section 15/D-15/G.

This section expands on the rules contained in Article 28b (1) and (2) of the revised AVMSD by referring to content “contrary to human dignity” and content constituting “open denial of Nazi crimes and communist crimes” and by creating rules meant to protect right-holders.

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

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements referred to under section 5.16.3.1, Section 15/E (1) of the Act on Electronic Commerce and on Information Society Services imposes the following, by expanding the requirements of the revised AVMSD to include the obligation on VSP providers to adequately specify under their terms and conditions the technological solutions in place which enable the protection of users from harmful content:

In order to provide users and customers with adequate information and to facilitate the enforcement of requirements relevant to contents, video-sharing platform providers shall mention in their general terms and conditions the cases and the requirements described in Subsection (1) of Section 15/D, as well as the measures and technological solutions provided for in Section 15/F designed to ensure compliance with them.

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

Regarding the measure consisting in including and applying in the terms and conditions of the VSP services the requirements set out for audiovisual commercial communications that are not marketed, sold or arranged by the VSP providers, Section 15/E (2) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, in line with the revised AVMSD:



Video-sharing platform providers shall mention in their general terms and conditions the requirements set out in Section 24 of the Media Act and Subsections (1)-(7) of Section 20 of the Press Act relevant to commercial communications broadcast by the users of video-sharing platform services.

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

Regarding the measure consisting in having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know, Section 15/G (b) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding the requirements of the revised AVMSD to include an obligation to make the functionality “transparent, effective and user-friendly”:

Video-sharing platform providers shall have in place transparent, effective and user-friendly mechanisms, functions [...] b) for users who upload user-generated videos to declare whether such videos contain commercial communications as far as they know.

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

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag the content to the VSP provider, Section 15/G (c) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding the requirements of the revised AVMSD to include an obligation to make the mechanism “effective”:

Video-sharing platform providers shall have in place transparent, effective and user-friendly mechanisms, functions [...] c) for users to report or flag to the video-sharing platform provider concerned any content alleged to infringe the requirements referred to in Subsection (1) of Section 15/D, or to lodge a complaint relating to such content.

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

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Section 15/G (d) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding the requirements of the revised AVMSD to make the system “transparent, effective and user-friendly”:



Video-sharing platform providers shall have in place transparent, effective and user-friendly mechanisms, functions [...] d) to describe in clear and plain language to users the process and what effect has been given to the declaration, reporting and flagging referred to in Paragraphs b) and c), and on the handling of complaints.

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

Regarding the measure consisting in establishing and operating age verification systems for users of VSPs with respect to content which may impair the physical, mental or moral development of minors, Section 15/F of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding from the requirements of the revised AVMSD to make the system “effective”:

(1) Video-sharing platform providers shall introduce sufficient measures and effective technological solutions so as to ensure compliance with the requirements described in Subsection (1) of Section 15/D.

(2) With a view to enforcing the requirement set out in Paragraph a) of Subsection (1) of Section 15/D, video-sharing platform providers shall have in place effective age verification and parental control systems, that are under the control of the users.

(3) Having regard to Subsection (2), the age verification and parental control systems shall be considered effective if realistically capable of ensuring compliance with the requirements set out in Paragraph a) of Subsection (1) of Section 15/D relying on the verification of the true age of users and viewers, specifically that minors will not normally hear or see such harmful content.

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

Regarding the measure consisting in establishing and operating easy-to-use systems allowing users of VSPs to rate the content, no specific legal provision under the Act on Electronic Commerce and on Information Society Services deals with this issue.

5.15.3.9. Providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors – Article 28b (3) (h) AVMSD

Regarding the measure consisting in providing for parental control systems that are under the control of the end user with respect to content which may impair the physical, mental



or moral development of minors, Section 15/F of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, by expanding the requirements of the revised AVMSD to include an obligation to make the system “effective”:

(1) Video-sharing platform providers shall introduce sufficient measures and effective technological solutions so as to ensure compliance with the requirements described in Subsection (1) of Section 15/D.

(2) With a view to enforcing the requirement set out in Paragraph a) of Subsection (1) of Section 15/D, video-sharing platform providers shall have in place effective age verification and parental control systems, that are under the control of the users.

(3) Having regard to Subsection (2), the age verification and parental control systems shall be considered effective if realistically capable of ensuring compliance with the requirements set out in Paragraph a) of Subsection (1) of Section 15/D relying on the verification of the true age of users and viewers, specifically that minors will not normally hear or see such harmful content.

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

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Section 15/G (c) (d) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, in line with provisions stipulated under the revised AVMSD:

Video-sharing platform providers shall have in place transparent, effective and user-friendly mechanisms, functions [...] c) for users to report or flag to the video-sharing platform provider concerned any content alleged to infringe the requirements referred to in Subsection (1) of Section 15/D, or to lodge a complaint relating to such content d) to describe in clear and plain language to users the process and what effect has been given to the declaration, reporting and flagging referred to in Paragraphs b) and c), and on the handling of complaints.

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

Regarding the measure consisting in providing for effective media literacy measures and tools and raising users' awareness of those measures and tools, Section 15/H of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, in line with the respective provisions under the revised AVMSD: “Video-sharing



platform providers shall have in place media literacy measures and tools and raise users' awareness of those measures and tools.”

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

Regarding the processing of personal data of minors collected or otherwise generated by VSP providers for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, Section 15/F (6) of the Act on Electronic Commerce and on Information Society Services imposes the following obligation, in line with the respective provisions under the revised AVMSD:

Personal data of minors collected or otherwise generated by video-sharing platform providers pursuant to Subsections (1) and (2) shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

5.15.3.13. Other relevant provisions related to the protection of minors

The Act on Electronic Commerce and on Information Society Services provides the following safeguard for the protection of minors:

Section 4/A

Any information published by a service provider – that is not recognised as media content in accordance with Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content – whose content might seriously impair the physical, mental, spiritual and moral development of minors, in particular those that are dominated by graphic scenes of violence and/or sexual content and that depicts nudity, may be published only with warning labels displaying – in advance – on the sub-page that contains the information about the potential harm it may cause to children, and with identifiers incorporated into the source code indicating the content category, and which can be identified by the content-filtering software provided for in Subsection (1) of Section 149/A of Act C of 2003 on Electronic Communications (hereinafter referred to as “ECA”) (hereinafter referred to as “content-filtering software”).

The enforcement of the above legal provision is monitored by the Internet Round-table Conference for the Protection of Children.

Article 7 of the Code of Ethics adopted by the Association of Hungarian Content Providers (MTE)²¹⁴ also contains certain commitments (adopted within the framework of self-regulation) to ensure appropriate measures are taken to protect minors from harmful content, such as age verification and filtering, by stating specifically the following:

²¹⁴ <http://mte.hu/etikai-kodex/>.



Content Providers commit themselves to inform users before entering a service in case it is, wholly or partially, susceptible of being harmful for minors. Attention must be raised to the quality of such contents before accessing them, and the user must actively confirm that he/she has passed the prescribed age limit; the space reserved for this purpose may not contain visual, textual, or any other kind of items pertaining to the actual content.

Content Providers commit themselves to make every effort to avoid the unsolicited presentation of any contents that are inappropriate for minors and juveniles, or severely injurious or shocking to a part of users. It is a basic principle to be respected in the case of both edited and user-generated contents to notify users before accessing such contents.

Furthermore, Content Providers commit themselves to make services, or information regarding the ways of utilising services, easily accessible, when these may be used for the prior filtering of pages accessible for minors (the so-called filters) in the hands of persons in charge of taking care of minors. Such filters may include, among others: – AOL Parental Control – Bair Filtering System – CSM Proxy Server – Cyber Sentinel – Eyeguard – Genesis – Ifilter – Internet Sheriff – I-Gear – Kahootz – Kidz.Net – Net Nanny – Surfwatch – Too C.O.O.L. – Websense.

Additional protective measures for minors have been drawn up by the Hungarian Code of Advertising Ethics²¹⁵ for the purpose of providing professional and ethical norms for those engaged in advertising activities in Hungary. It has been envisaged that through the application of the Code, the self-regulation is recognised by the Hungarian Parliament in the preamble to the Act on Fundamental Conditions of Economic Advertising Activities and it is implemented the Act on Prohibiting Unfair Commercial Practices towards Consumers.

Article 18 of said code stipulates provisions for the advertising of food products; furthermore, Article 19 of the code provides provisions regarding the advertising of alcoholic beverages. The code was reviewed and approved by organisations of the advertising profession on 17 February 2015. It is applicable from 30 June 2015.

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

Section 8 of the Act on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities imposes on all types of advertising certain obligations related to the protection of minors, with regard, for example, to exposure to violence or portraying them in situations of danger, by declaring the following:

(1) No advertisement may be disseminated if it is capable of harming the physical, intellectual or moral development of children and young persons.

(2) No advertisement addressed to children and young persons may be disseminated if it has the capacity to impair the physical, mental or moral development of children and young

²¹⁵ <http://www2.ort.hu/en/code/foreword>.



persons, in particular those that depict or make reference to gratuitous violence or sexual content, or that are dominated by conflict situations resolved by violence.

(3) No advertisement may be disseminated if it portrays children or young persons in situations depicting danger or violence, or in situations with sexual emphasis.

(4) No advertisement of any kind may be disseminated in child welfare and child protection institutions, kindergartens, grammar schools and in dormitories for students of grammar schools. This ban shall not apply to the dissemination of information intended to promote healthy lifestyles, the protection of the environment, or information related to public affairs, educational and cultural activities and events, nor to the display of the name or trademark of any company that participates in or makes any form of contribution to the organisation of such events, to the extent of the involvement of such company directly related to the activity or event in question.

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

According to Article 9.4 of the AVMSD, member states shall encourage the use of co- and self-regulation regarding inappropriate audiovisual commercial communications accompanying or included in children's programmes.

Regarding this issue, Section 15/D of the Act on Electronic Commerce and on Information Society Services specifically declares the following:

(1) In the interest of protection of viewers, video-sharing platform providers shall implement the measures and technological solutions provided for in Article 15/F if [...] d) the commercial communication broadcast by the user of video-sharing platform service does not comply with the requirements laid down in Sections (1)-(7) of Article 20 of Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content (hereinafter referred to as "Press Act") or Article 24 of the Media Act.

(2) Commercial communications marketed, sold or arranged by video-sharing platform providers must comply with the requirements laid down in Sections (1)-(7) of Article 20 of the Press Act or Article 24 of the Media Act.

More specifically, Article 15/M (5) almost literally transposes Article 9.4 by adding the following:

Self-regulatory bodies shall encourage their members to introduce adequate measures through codes of conduct aiming at effectively reducing the exposure of children to electronic communications, commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-



fatty acids, salt or sodium and sugars, of which excessive intake in the overall diet is not recommended, furthermore, they shall encourage their members to provide that such electronic communications, commercial communications for foods and beverages do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

5.15.3.16. Other relevant information

The 2012 Criminal Code contains certain articles that pertain to the concepts at stake and are relevant to the regulation of VSPs, such as those related to acts of terrorism, incitement against a community and child pornography.

As an important institutional tool and dedicated institution for the online protection of minors in Hungary, the National Media and Infocommunications Authority (NMHH) successfully operates the Internet Hotline service,²¹⁶ an online information and help service operated by the NMHH in the spirit of corporate social responsibility, since 2011. It operates as a web-based reporting site where illegal and harmful online content can be reported in reporting categories which include: (1) child sexual abuse material, (2) data phishing, (3) cyberbullying, (4) content made accessible without permission, (5) content promoting drug use or (6) terrorism, (7) racist, hateful content or (8) violent content, or (9) other content harmful to minors. Internet users may file reports through the hotline's online interface²¹⁷ or the dedicated email address.²¹⁸ The Internet Hotline service does not collect any information about people who file reports – anyone can ask for help, even anonymously. The activity of the Internet Hotline is not for the benefit of the authorities, it acts in the public interest. Lacking statutory powers, the Internet Hotline and its operator, the NMHH cannot call for the deletion of any content or the inclusion of a warning of content harmful to minors.

The Internet Hotline may only request the removal of the contested content by citing that it might infringe legislation. An investigation initiated on the basis of a report is not an official procedure because it would be subject to different legislation. The Internet Hotline has no official authority, it does not conduct official proceedings, it does not impose official fines and a report does not qualify as an official case. It can only investigate Internet abuse that does not fall within the exclusive jurisdiction of another authority, court, or other public body.

It is also worth noticing that incitement to hatred has been described by the Hungarian Constitutional Court:

According to the law, the term “incitement” is not the expression of some unfavourable and offensive opinion, but virulent outbursts which are capable of whipping up intense emotions in the majority of people which, upon giving rise to hatred, may result in disturbing the

²¹⁶ More information on the 2020 annual results of the Internet Hotline under: https://english.nmhh.hu/article/218294/Home_confinement_intensified_online_abuse.

²¹⁷ <http://nmhh.hu/internethotline/>.

²¹⁸ internethotline@internethotline.hu.



social order and peace (Curia, 7 Crim. Law Reports 272). This way, criticism, disapproval, objections or even offensive declarations do not constitute incitement; incitement occurs only when the expressions, comments, etc. do not address reason but they seek to influence the world of emotions and are capable of arousing passion and hostile feelings. For the concept of incitement it is totally irrelevant whether or not the facts stated are true; what matters is that the specific composition of data, no matter if true or false, is capable of arousing hatred. (Curia, 1 Crim. Law Reports 124).²¹⁹

5.15.4. Practicability of the measures imposed on VSP providers

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

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

Section 15/F of the Act on Electronic Commerce and on Information Society Services takes the principle of proportionality into consideration, especially under paragraph 4, by declaring the following:

...(4) The measure provided for in Subsections (1) and (2) shall be considered appropriate if proportionate to the harm or damage the content may cause. In terms of proportionality, the measures shall be determined in light of the nature of the content in question, the damage or harm it may cause, the characteristics of the category of persons to be protected, the size and nature of the video-sharing platform service in question, as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created or uploaded the content as well as the general public interest. In the case provided for in Paragraph a) of Subsection (1) of Section 15/D, the most harmful content shall be subject to the strictest access control measures.

5.15.5. 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

²¹⁹http://hunconcourt.hu/uploads/sites/3/2017/11/en_0012_1999.pdf (ENG)

<http://public.mkab.hu/dev/dontesek.nsf/0/492D281B4506140EC1257ADA0052AA1E?OpenDocument> (HUN).



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).

5.15.5.1. Regulatory body

The competent regulatory body for VSPs is the Office of the NMHH.²²⁰

5.15.5.2. Existence of a registration/notification system

VSP providers are obliged under law to notify their respective services to the NMHH. This notification shall be made prior to the launch of the service and shall contain basic administrative information regarding the provider itself.

Any change to this information shall be subject to notification within 15 days under law.

Section 15/C of the Act on Electronic Commerce and on Information Society Services provides detailed provisions regarding the aforementioned notification requirements as cited hereunder:

1) For the purpose of registration, video-sharing platform providers shall send notification to the Office of the Authority (hereinafter referred to as the “Office”) declaring their intention to commence the provision of video-sharing platform services, and the Office shall maintain a public register of video-sharing platform services. That register shall be construed as an official public register as regards the data provided for in Paragraphs f)-h) of Subsection (2). Registration is not a precondition for launching the service.

(2) The notification of video-sharing platform services submitted to the Office shall contain:

- a) the notifier’s name;*
- b) the notifier’s address (registered office or establishment), designation of establishment (establishments) where the service is provided;*
- c) the notifier’s contact information (telephone number and electronic mail address);*
- d) the name and contact information (telephone number, mailing address and electronic mail address) of the notifier’s executive officer, representative, and of the person in charge of communication with the Authority;*
- e) the notifier’s registered number or registration number (official identification number);*
- f) description of the service, and its website address (URL address);*
- g) planned date of launching the service;*

²²⁰ <http://nmhh.hu/>.



h) information to indicate on which of the criteria set out in Subsections (1a)-(1d) of Section 1 jurisdiction is based.

(3) The Office shall enter the video-sharing platform service, based on the information supplied in the notification, into the register of video-sharing platform services, and shall send a confirmation of registration to the notifier within eight days from the date of registration.

(4) The Office shall communicate the name of the video-sharing platform provider, the designation of the video-sharing platform service, and the details of jurisdiction, including any updates thereto, to the European Commission.

(5) The Office shall withdraw the registration if the designation of the notified video-sharing platform service is identical to, or is confusingly similar to, the designation of a video-sharing platform service that was registered earlier and shown as such in the register at the time the notification was submitted.

(6) The Office shall withdraw the registration of the video-sharing platform service if:

- a) registration should be withdrawn pursuant to Subsection (5);*
- b) the video-sharing platform provider requested to be removed from the register;*
- c) the holder of the right to provide the video-sharing platform service fails to start providing the service within a year from the date of registration thereof, or suspends an ongoing service for over a year;*
- d) the video-sharing platform service was removed from the register by order of the Office for infringements of the requirements set out in Section 15/D-15/G; or*
- e) there is a binding court order in force relating to a trademark infringement stemming from the designation of the video-sharing platform service prohibiting the infringer from proceeding with such infringement.*

(7) Video-sharing platform providers shall notify the Office of any changes in their data on record within fifteen days of the effective date of such changes.

(8) In the event of a change in the video-sharing platform provider's person, the video-sharing platform provider having submitted the original notification shall request to have the relevant records updated as appropriate.

(9) In the event of any breach of the provisions on registration on the video-sharing platform provider's part, the Office shall have power to impose a fine of up to ten million forints, taking account of the principles set out in Subsection (3) of Section 15/I.



5.15.5.3. Compliance, enforcement and sanctioning powers

Compliance with the regulatory framework is ensured by the NMHH which may impose legal sanctions, including fines, the suspension of service provision for up to a total maximum duration of one week or the removal of non-compliant service providers from the official register of video-sharing platform providers.

Section 15/I of the Act on Electronic Commerce and on Information Society Services details the specific enforcement powers of the NMHH:

1) The Office shall review the operation of the provisions set out in Sections 15/D-15/H – having regard to Section 15/J and Subsection (2) of Section 15/P as well – within the framework of its regulatory authority.

(2) In the event of an infringement the Office shall have power to apply the following legal consequences:

a) prohibit the unlawful conduct, order the video-sharing platform provider to bring the infringement to an end, and impose obligations for the enforcement of the provisions of this Act;

b) order the video-sharing platform provider to publish a notice or the decision on the home page of its website, in the manner and for the period of time specified in the decision;

c) impose a fine up to one hundred million forints;

d) order the video-sharing platform provider to suspend its service for a period of minimum fifteen minutes up to one week; or

e) delete the video-sharing platform service from the register provided for in Subsection (1) of Section 15/C.

(3) In applying the necessary legal measures, the Office – under the principle of equal treatment – shall act in accordance with the principles of progressivity and proportionality; it shall apply the legal consequence proportionately in line with the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the sanction.

(4) The Office shall establish the legal consequences – depending on the nature of the infringement – taking into account the gravity of the infringement, its re-occurrence, continuity, duration, the financial advantage gained as a result of the infringement, the harm caused by the infringement, the number of persons aggrieved or jeopardised by the infringement, the damage caused by the infringement, the violation of personality rights and the impact of the infringement on the market, and other considerations that maybe taken into account in the particular case. Repeated infringement shall mean when the infringer committed the unlawful conduct as established in the definitive administrative decision on the same legal basis and in breach of the same provisions of legislation, in the same subject, repeatedly within three hundred and sixty-five days.

(5) The Office, acting outside its regulatory authority, shall periodically analyse, assess and



evaluate the adequacy and effectiveness of the measures taken by video-sharing platform providers pursuant to Section 15/F, and may request data and information from the video-sharing platform providers to that end.

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

In line with the text of the revised AVMSD, which puts strong emphasis on the development of self- and co-regulatory schemes related to the implementation of obligations of VSPs, Section 15/J of the Act on Electronic Commerce and on Information Society Services elaborates on these schemes in the following manner:

(1) With a view to facilitating voluntary compliance with the law, the Office shall cooperate with the self-regulatory bodies of video-sharing platform providers, including their alternative forums for dispute settlement (hereinafter referred to collectively as “self-regulatory bodies”).

(2) In the context of the cooperation referred to in Subsection (1), the Office shall have authority to conclude an administrative agreement with the self-regulatory body of good standing, that is to say established and operating in accordance with the relevant legislation (hereinafter referred to as “administrative agreement”), on cooperation for the shared handling of cases falling within the administrative competence provided for in Subsection (2) of Section 15/K together with such self-regulatory bodies, and for the joint performance of tasks not falling within the scope of administrative competence by law but nevertheless compliant with the provisions of this Act.

(3) Under administrative agreement the Office shall have power to authorise the self-regulatory body to perform self-management tasks beyond the scope of administrative powers in relation to its registered members and video-sharing platform providers which have accepted the terms of the Code of Conduct defined in Section 15/M (hereinafter referred to collectively as “business entities covered by the Code”) in official cases specified in Subsection (2) of Section 15/K within the powers conferred under the agreement, prior to specific exercise of powers of the competent authority.

(4) The authorisation granted under Subsection (3) shall not confer administrative and executive powers upon the self-regulatory body, and the self-regulatory body shall not be construed as an administrative authority nor shall it be covered by the administration system under this authorisation.

(5) The authorisation granted under the administrative agreement shall not affect the powers of the Office under this Act in relation to video-sharing platform services, the Office shall have powers to proceed in administrative cases irrespective of this authorisation.



Section 15/K to 15/V further detail the practicalities of such administrative agreements, including practicalities related to the development of codes of conduct.

On the basis of Chapter VI (Sections 190 to 202A) of the Act on Media Services and on the Mass Media, the NMHH has already reached several such administrative agreements, including with the following Hungarian Associations: Association of Hungarian Content Providers,²²¹ Association of Hungarian Electronic Media Service Providers,²²² Hungarian Publishers' Association²²³, also Hungarian Advertising Standard Alliance.²²⁴

5.15.5.5. Out-of-court redress mechanisms for users

Section 15E (3) of the Act on Electronic Commerce and on Information Society Services states that:

3) The general terms and conditions of video-sharing platform providers shall contain information for the out-of-court settlement or settlement by way of judicial process of disputes between users and the video-sharing platform provider arising out of or in connection with the application of Sections 15/F and 15/G.

5.15.5.6. Rights before a court for users

No specific provision under the Act on Electronic Commerce and on Information Society Services deals with this issue, but nothing prevents users from asserting their rights before a court of law.

5.15.6. Studies, reports and research

N/A.

5.15.7. Data compilation

This factsheet is based on data compiled by Zsuzsa Detrekői, fellow at the Center for Media, Data and Society (CMDs) of the Central European University School of Public Policy.

²²¹ <http://mte.hu/in-english/>.

²²² <https://www.memeinfo.hu/en>.

²²³ <http://mle.org.hu/english/>.

²²⁴ <http://www.ort.hu/en/>.