



5.21.MT – Malta – National legal summary²⁵⁶

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

5.21.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Amendments to the Broadcasting Act.²⁵⁷

5.21.2. 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 41. 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: Maltese response to European Audiovisual Observatory standardised survey

²⁵⁶ The factsheet on Malta incorporates the feedback received from Joanna Spiteri and Randolph Micallef (Malta Broadcasting Authority) during the 2021 and 2022 checking rounds with the national media regulatory authorities.

²⁵⁷ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=30266&l=1>.



5.21.2.1. VSP service

Chapter 350, Article 4n of the Act defines the term “video-sharing platform 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 programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.

5.21.2.2. VSP provider

Chapter 350, Article 4n of the Act defines the term “video-sharing platform provider” by transposing the text of the revised AVMSD verbatim, as follows:

Video-sharing platform provider means the natural or legal person who provides a video-sharing platform service.

5.21.2.3. User-generated video

Chapter 350, Article 4n of the Act provides for the definition of user-generated content as follows:

User-generated content 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 to a video-sharing platform by that user or any other user.

5.21.2.4. “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.

5.21.2.5. “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.



5.21.3. 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.

5.21.3.1. General provisions

While the current provisions in the Broadcasting Act such as Article 16J(2) which states that: “Audiovisual media services provided by media service providers shall not contain any incitement to hatred based on race, sex, religion or nationality”, Subsidiary Legislation 350.26 (Requirements as to Standards and Practice on the Promotion of Racial Equality) dealing with racial equality, tolerance and diversity, the Act, in Article 16O (7) stipulates that audiovisual media services shall not include:

- (a) *Incitement to violence or hatred against a group or a member of a group on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union;*
- (b) *Public provocation to commit a terrorist offence as determined in accordance with Article 5 of Directive (EU) 2017/541.*

This includes references to public provocation to commit a terrorist attack. Further, the Act makes specific reference to the obligation for VSPs under the jurisdiction of Malta to take necessary measures to protect 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 group. Legislation also makes reference to offences concerning child pornography and racism and xenophobia.

The relevant provisions are included in Article 16S (1) (a) (b) and (c) of the Act, which read as follows:

Without prejudice to Articles 19, 20, 21 and 22 of the Electronic Commerce Act and Articles 12 to 15 of Directive 2000/31/EC, video-sharing platform providers under the jurisdiction of Malta shall take the necessary measures to protect:



- (a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 16JA;*
- (b) 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 any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union;*
- (c) 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 under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive(EU) 2017/541 and in Book First, Part II, Title IX, Sub-title IVA of the Criminal Code, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU and in Book First, Part II, Title VII, Sub-title II of the Criminal Code and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA and as also provided for in articles 83B and 83C of the Criminal Code.*

Current Subsidiary Legislation 350.05 – Broadcasting Code for the Protection of Minors. Paragraph 3 of this legislative framework states:

Broadcasts shall not include any programmes which might seriously impair the physical, mental or moral development of minors, and in particular they shall not include programmes that involve pornography or gratuitous violence.

The new Article 16JA (1) stipulates:

Audiovisual media services provided by media service providers which may impair the physical, mental or moral development of minors shall only be made available in such a way as to ensure that minors will not normally see or hear them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures.

Article 16JA (2) of the Act further stipulates that: “The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures.” Additionally, the watershed is now being amended to extend until 22:00 as opposed to the previous 21:00.²⁵⁸

5.21.3.2. 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 5.22.3.1, Article 16S (1) of the Act

²⁵⁸ Watershed at 22:00hrs is being included as part of the bill. At present, the watershed is still 21:00hrs.



refers to appropriate measures regarding the content of VSPs by transposing the obligations from the revised AVMSD in full:

VSPs under the jurisdiction of Malta are required to take measures to protect minors from programmes, user-generated videos and audiovisual commercial communications from content that may impair their physical mental and moral development. This can be done by age verification tools or other technical measures.

5.21.3.3. 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 16 S (3) of the Act states:

Video-sharing platform providers under the jurisdiction of Malta shall take appropriate measures to comply with requirements set out in Article 16K with respect to audiovisual commercial communications that are not marketed, sold or arranged by those video-sharing platform providers, taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications.

5.21.3.4. 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 16S (4) of the Act provides for this obligation in the following manner:

Video-sharing platform providers shall clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared under paragraph (c) of sub-article (6) or the provider has knowledge of that fact.

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

Regarding the measure consisting in establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag to the VSP provider the content referred to in Article 16S (1) of the Act, in Article 5(d) (e) stipulates the obligation of



establishing and operating transparent and user-friendly mechanisms for users of a VSP to report or flag content, 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 sub-article (1) provided on its platform

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

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, the Act in Article 16S (6) (d)(e) provides for the obligation for VSPs to establish transparent procedures for users to flag content and the outcome of such reporting, 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 paragraph (d)

5.21.3.7. 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 16S (6) (f) of the Act stipulates the need for VSPs to establish and operate age verification systems with respect to harmful content for minors, 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.

5.21.3.8. 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 referred to in Article 176/4 of the legislation, Article 16S(6) (g) of the Act stipulates the need to establish and operate easy-to-use systems, as follows:

establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in sub-article (1).



5.21.3.9. 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 16S(6) (h) of the Act provides for the establishment of 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, 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.

5.21.3.10. 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 referred to in Article 16S6 (i) plus Article 16S (1), the Act in Article 16S (11) draws a parallel to an existing article within the Broadcasting Act (Article 21A) which outlines how a third party can submit a complaint for investigation, as follows:

In case of disputes arising between users and video-sharing platform providers relating to the application of the provisions of this article, the provisions on the investigation of complaints shall apply in accordance with Article 21A.

5.21.3.11. 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 16MA (1) of the Act stipulates the creation of a board known as the Media Literacy Development Board to create a strategy for media literacy skills, while Article 16S6(j) provides for effective media literacy measures and tools and raising users' awareness of those measures and tools, as follows:

providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.

Article 16MA (1) specifies that the minister, in consultation with the Authority, shall appoint a board to be referred to as the “Media Literacy Development Board” consisting of no fewer than 10 members including a number of media experts and chaired by a chairperson



appointed by the minister, so that after consultation and assistance from the Authority and other government entities, draw up a plan, promote and take all the necessary measures for the development of media literacy skills.

5.21.3.12. 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 16S (8) of the Act states:

Personal data of minors collected or otherwise generated by VSP providers shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

5.21.3.13. Other relevant provisions related to the protection of minors

N/A.

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

While there is no definition of what constitutes physical, mental or moral development, Article 16(K) (5) of the Act elaborates on the situations depicting minors which are prohibited in advertising:

Audiovisual commercial communications shall not cause physical, mental or moral detriment to minors; therefore, they shall not directly exhort minors to buy or hire 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.

The same principle can be found in subsidiary legislation 350.05 – Code for the Protection of Minors which outlines a number of provisions aimed at safeguarding minors particularly in relation to advertising. In particular, minors should not be featured entering unfamiliar places or talking to strangers, playing with matches or disinfectants, leaning on windows or playing in the road.



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

The provisions of Article 16K of the Act (regarding audiovisual commercial communications) are included in the provisions of Article 16S, therefore the provisions applicable for audiovisual media service providers also apply to VSPs. This means that advertising relating to alcoholic products and HFSS foods are subject to the same regulation as applicable to audiovisual media services.

Article 16(K) (6) of the Act stipulates:

Broadcasting of all forms of audiovisual commercial communications on food and beverage brands and products containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, the type of products known as High in Fat, Sugar and Salt (HFSS) is prohibited immediately, before or during or immediately after children's programmes.

In addition, Article 16S (2) and (3) of the Act outline provisions for VSPs to be compliant with the provisions of Article 16K for content that is marketed, sold or arranged by the VSP providers and also for content that is not marketed, sold or arranged by those VSPs. For the latter, however, consideration is given to the limited control VSPs have over these issues, by: "taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications."

5.21.3.16. Other relevant information

N/A.

5.21.4. 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.

No specific provision of the Act deals with this issue, except for the reference to audiovisual commercial communication and harmful content applicable to minors as to the nature of the content.



5.21.5. 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 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).

5.21.5.1. Regulatory body

The competent regulatory body for VSPs is the Malta Broadcasting Authority (BA).²⁵⁹

5.21.5.2. Existence of a registration/notification system

All broadcasting related matters fall under the competency of the BA, while the Act, in Article 16(R)(7) outlines the registration process for a VSP under Maltese law:

A VSP established or deemed to be established in Malta shall notify the Authority in writing by means of a letter addressed to the Chairman of the Authority which notification shall include: (a) in the case of a natural person, the name, surname, address, ID or passport number or any other documentation as may be accepted by the Authority or (b) in the case of a legal person, the name and address of the company and of the registered office.

5.21.5.3. Compliance, enforcement and sanctioning powers

Article 16S (10) of the Act refers to appropriateness of measures and the right for the BA to issue directives where it considers necessary. Article 15 vests the Broadcasting Authority with the power to issue any directive in relation to VSPs:

The Authority shall assess the appropriateness of the measures referred to in sub-article (3) taken by video-sharing platform providers and has the right to issue all directives which it considers necessary or expedient for the proper execution referred to in this article.

²⁵⁹ <http://www.ba-malta.org/>



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

No specific provision of the Act provides for a legal obligation, except for references to the encouragement of the use of co-regulation and self-regulation through codes of conduct. There is no legal obligation for VSPs or audiovisual service providers to form a self- or co-regulatory approach/code. Furthermore, no structured self- or co-regulatory frameworks exist for the industry in Malta.

5.21.5.5. Out-of-court redress mechanisms for users

Article 16 (S) 11 of the Act makes provisions for disputes arising between users and VSPs. These shall be dealt with according to the current Article 21A of the Broadcasting Act, determined by Subsidiary Legislation 350.06 (Code for the Investigation and Determination of Complaints):

In case of disputes arising between users and video-sharing platform providers relating to the application of the provisions of this article, the provisions on the investigation of complaints shall apply in accordance with Article 21A;

5.21.5.6. Rights before a court for users

Article 16(S) 11 states that:

Provided that this shall not deprive the rights of the user to have recourse to any other means that may offer legal protection including, if necessary, recourse to the Courts of ordinary jurisdiction and Courts of Constitutional jurisdiction where this is permitted by law.

5.21.6. Studies, reports and research

N/A.

5.21.7. Data compilation

This factsheet is based on data compiled by Pierre Cassar, Lecturer and Director of Marketing and Communication at the University of Malta.