



5.25.PT – Portugal – National legal summary³⁰⁸

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) have been transposed into Law 74/2020 (the Law).

5.25.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Law 74/2020 (Lei n.º 74/2020 de 19 de novembro – Transpõe para a ordem jurídica interna a Diretiva (UE) 2018/1808 do Parlamento Europeu e do Conselho, de 14 de novembro de 2018, alterando a Lei n.º 27/2007, de 30 de julho, que aprova a Lei da Televisão e dos Serviços Audiovisuais a Pedido, e a Lei n.º 55/2012, de 6 de setembro, relativa ao fomento, desenvolvimento e proteção da arte do cinema e das atividades cinematográficas e audiovisuais).³⁰⁹

5.25.2. 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 45. 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.

³⁰⁸ The factsheet on Portugal incorporates feedback received from Paulo Barreto and Joana Duarte at the Portuguese Regulatory Authority for the Media (ERC), during the 2021 and 2022 checking rounds with the national media regulatory authorities.

³⁰⁹ <https://dre.pt/web/guest/home/-/dre/148963298/details/maximized>.



“Essential functionality”	Yes.
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Source: Portuguese response to European Audiovisual Observatory standardised survey

5.25.2.1. VSP service

Article 2.º, No. 1, paragraph aa) of the Law provides for the definition of a VSP service in a simplified wording from that provided for in the revised AVMSD:

A service which, under the scope of the Articles 56 and 57 of the Treaty on the Functioning of the European Union, in whole or in dissociated part, has as its main purpose or essential function the provision of programmes and/or services to the general public of user-generated videos, where

- i) their organisation is determined by the video-sharing platform provider, notably by automatic means or by algorithms, in particular through the presentation, identification and sequencing, but such providers do not exercise editorial responsibility on the programmes and/or videos generated by users;*
- ii) they are intended to train, inform or entertain; and*
- iii) they are broadcast over electronic communications networks within the meaning of Article 2(4) of the European Electronic Communications Code.*

5.25.2.2. VSP provider

The Law, in Article 2.º, No. 1, paragraph ee) provides for a simplified definition of the VSP provider: “A collective or individual person who provides a video-sharing platform service.”

5.25.2.3. User-generated video

The Law, in Article 2.º, No. 1, paragraph bb) defines user-generated video by transposing the text of the revised AVMSD verbatim, as follows:

A set of moving images, with or without sound, that: i) constitutes an autonomous element, regardless of its duration; ii) is created by one or more users; and iii) is uploaded to a video-sharing platform by the user who created it or by other users.

5.25.2.4. “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.

5.25.2.5. “Essential functionality” of a VSP service

Article 2, No. 3 introduces the following:



The provision of programmes and videos generated by users is considered to constitute an essential functionality of the social networking service if the audiovisual content is not merely accessory in relation to the activities of that social networking service, or if it does not constitute a minor part of these activities.

5.25.3. 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.

5.25.3.1. General provisions

Under the current legislation for audiovisual services, content inciting to violence or hatred is defined as “programming elements that spread, incite racial, religious, political or colour hatred generated by colour, ethnic or national origin, sex, sexual orientation or disability”. The Law, in Article 27.^o, No. 2, defines, in relation to audiovisual media services, content inciting to violence or hatred as:

programming elements that incite violence, hatred against groups of people or members of such groups on grounds of sex, race, colour or ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinions, belonging to a national minority, wealth, birth, disability, age, sexual orientation or nationality.

Regarding the protection of minors, the current legislation describes content which may impair the physical, mental or moral development (which is a new provision) of minors as that which contains pornography or gratuitous violence.

The Law provides for the obligations as stipulated by the AVMSD:

Article 69.^o-A

Without prejudice to Articles 12 to 16 of Law-Decree No. 7/2004, of 7 January, providers of video-sharing platforms take appropriate measures to protect:



- a) *Minors and young people against programmes, user-generated videos and commercial communications which may impair their physical, mental or moral development;*
- b) *The general public against programmes, user-generated videos and audiovisual commercial communications that contain incitement to violence or hatred against groups of people or members of those groups based on one of the reasons referred to in paragraph 2 of Article 27;*
- c) *The general public against programmes, user-generated videos and audiovisual commercial communications with content the dissemination of which consists of an activity that constitutes a criminal offence, namely public incitement to commit terrorist offences, as provided for in Law No. 52 / 2003, of 22 August, offences related to child pornography, as provided for in Law No. 103/2015, of 24 August and in Article 176 of the Penal Code, and racist and xenophobic infractions.*

Paragraph c) of Article 69.^o-A of the Law, specifically targeting VSPs, includes terrorist acts, in addition to references to other content, and states the following:

Content the dissemination of which constitutes an activity which is a criminal offence such as

- *Content publicly inciting to acts of terrorism; [...]*
- *Offences related to child pornography [...], and racist and xenophobic violations.*

Furthermore, Article 69.^o-C, paragraph e) of the Law states that commercial communications must respect the restrictions concerning the protection of minors, namely through the introduction of a technical functionality that can prevent access to content that can harm their development, including pornography and gratuitous violence, and through a system of visual identification.

Finally, Article 69.^o -B, No. 1, paragraph j) relates to commercial communications and defines content which may impair the physical, mental or moral development of minors as that which directly incites minors to buy or rent products or services by taking advantage of their inexperience or credulity; that directly incites minors to persuade parents or other persons to buy products or services; that exploits the special trust minors have in parents, teachers or other persons; or that shows, without justifiable reason, minors in dangerous situations. The same article also states in paragraph g) that VSP providers must ensure that commercial audiovisual communications do not directly target children and young people when they refer to alcoholic beverages.

5.25.3.2. 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 5.26.3.1, the Law, in Article 69.^o-C, paragraph a) stipulates that they should be included in terms and conditions.



5.25.3.3. 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, the Law refers to this in part in the Article 69.^o-B, No. 2, as follows:

Suppliers of video-sharing platforms must take appropriate measures to ensure that audiovisual commercial communications transmitted through their services that are not promoted, sold or organised by them respect the provisions of the previous paragraph, and should include in the respective conditions of use the obligation for users to:

- a) Respect the rules in force regarding commercial communications, namely the provisions of the previous number;*
- b) Declaring the inclusion of audiovisual commercial communications in the videos generated by them.*

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

Regarding the measure consisting in having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know, the Law, in Article 69.^o-C, paragraph b) states that providers must:

Provide a feature that allows users who upload videos generated by users to declare whether those videos contain audiovisual commercial communications, insofar as they can know it or can reasonably be expected to know it.

5.25.3.5. 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, Article 69.^o-C, paragraph c) of the Law provides for the obligation of VSPs to:

Create and use transparent and easy-to-use mechanisms that allow the public of video-sharing platforms to report or flag, as well as classify the content referred to in Article 69.^o-A and in No. 1 of Article 69.^o-B.



5.25.3.6. 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 video-sharing platforms what effect has been given to their reporting and flagging initiatives, the Law, in Article 69.^o-C, paragraph d) obliges VSPs to “create and manage systems through which it is explained to the VSP public the follow-up to reporting or flagging mentioned in the previous paragraph”.

5.25.3.7. 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 video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors, Article 69.^o-C, paragraph e) of the Law refers to this in part in Article 69.^o-C, paragraph d) (see under 5.26.3.5.).

5.25.3.8. 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 69.^o-C refers to this (see under 5.26.3.5. and 5.25.3.7.).

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

Regarding the measure consisting in providing for parental control systems that are under the control of the end user with respect to content which may impair the physical, mental or moral development of minors, the Law, in Article 69.^o-C, paragraph f) provides for the use of “[p]arental control systems that are under the control of end users with regard to content that may impair the physical, mental or moral development of minors”.



5.25.3.10. 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, the Law, in Article 69.^o-C, paragraph g) obliges VSPs to:

Create and use transparent, easy-to-use and effective procedures for handling and resolving complaints submitted by the public to the VSP regarding the implementation of the measures referred to in paragraphs c) to f).

5.25.3.11. 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 69.^o-C, paragraph h) of the Law stipulates that providers must foresee efficient measures and instruments in matters of media literacy and must raise public awareness.

5.25.3.12. 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 93.^o-B of the Law states that any personal data of minors collected or generated by television programming operators, on-demand audiovisual service operators or providers of VSPs cannot be processed for commercial purposes, such as direct marketing, profiling or behaviour-oriented advertising.

5.25.3.13. Other relevant provisions related to the protection of minors

N/A.

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

The current media legislation states that the relevant provisions of the Advertising Code are applicable to audiovisual commercial communications, with the necessary adaptations. Article 41.^o -A, paragraph 8) of the Law prohibits the presentation during child programming



of any kind of commercial message that may harm the physical or mental development of minors, namely the ones foreseen in Article 20.^o-A of the Advertising Code.

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

Article 69.^o-B, No. 1, paragraph g) of the Law states that commercial communications concerning alcoholic drinks on VSPs cannot directly target minors.

Article 20-A of the Advertising Code includes restrictions on the advertising of HFSS foods and beverages, which are prohibited

on television programme services and services of video-on-demand and on the radio in the 30 minutes before and after children's programmes, and television programmes that have a minimum of 25% of audiences under 16 years old, as well as the insertion of advertising in the respective breaks.

It is also forbidden “on the internet, through websites or social networks, as well as in mobile applications for devices that use the internet, when its contents are addressed to minors under 16 years of age”.

A definition of HFSS foods and beverages is provided by the aforementioned Article 20-B:

1 - Food and beverages of high energy value, content of salt, sugar, saturated fat acids and processed fat acids are those that contain a quantity of the aforementioned elements that compromises, according to available scientific knowledge, a varied, balanced and healthy diet.

2 - For the purposes foreseen in the previous number, the Directorate-General for Health sets by order, taking into account the recommendations of the World Health Organization and the European Union, the values that must be taken into account in the identification of high energy value, content of salt, sugar, saturated fat acids and processed fat acids.

5.25.3.16. Other relevant information

N/A.

5.25.4. 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 Law deals with this issue.

5.25.5. 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).

5.25.5.1. Regulatory body

The competent regulatory body is the Regulatory Authority for the Media (ERC).³¹⁰

5.25.5.2. Existence of a registration/notification system

The Law establishes that the ERC will also be responsible for VSPs, including the obligation to keep a list of VSPs on its website, as well as being responsible for the supervision and verification of compliance with all mechanisms implemented to follow the applicable obligations. The ERC shall also promote and incentivise the adoption of self- and co-regulatory mechanisms. VSP providers are obliged to inform the ERC if their offer falls under Portuguese jurisdiction. Relevant provisions include:

Article 3.º, No. 8

Video-sharing platforms must inform the ERC of any relevant fact that determines that it offers services under the jurisdiction of the Portuguese State (Article 3, No. 4). In case of any sort of conflict involving the Portuguese jurisdiction, the ERC is responsible for informing the competent government member so that the question can be directed to the European Commission.

³¹⁰ <https://www.erc.pt/>.



5.25.5.3. Compliance, enforcement, and sanctioning powers

The Law, in Article 69.^o-F, No. 1, states that regulations and arbitrators are subject to the ERC's approval unless the VSP provider adheres to an existing arbitration centre.

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

There are still no self-regulatory or co-regulatory guidelines in regard to VSPs. In Portugal, there are a number of self-regulatory mechanisms, including the Code of Ethics for Journalists, several self-regulatory mechanisms for commercial communications, such as those resulting from signaling codes for the content of television broadcasts and mention of sponsorship and product placement, as well as the declaration of principles from the Portuguese media in relation to judicial processes and its journalistic coverage, subscribed to by the main television broadcasters and newspapers.

5.25.5.5. Out-of-court redress mechanisms for users

Since the Portuguese national legal framework establishes a system of arbitral tribunals in the Voluntary Arbitration Law, with a set of arbitration centres authorised by the government, the Law, in Article 69.^o-F, No. 3, states that VSPs must provide users (and the public) with arbitration tribunals or other non-judicial mechanisms legally authorised for resolving disputes. It also stipulates that “[t]he costs of the created mechanisms are fully borne by the video-sharing platform suppliers, and can only be charged to the counterparty when this dispute is in bad faith”.

5.25.5.6. Rights before a court for users

Article 69.^o-F, No. 5, of the Law states that resorting to arbitration tribunals or other non-judicial mechanisms legally authorised for resolving disputes does not impede resorting to regular courts.

5.25.6. Studies, reports and research

- University of Porto, Master Thesis: Legal problems of electronic video-sharing platforms: the creation of content on YouTube and its limits, 2019.³¹¹

³¹¹ <https://repositorio-aberto.up.pt/bitstream/10216/125887/2/381751.pdf>.



- Telematics and Informatics Journal: Usage of video-sharing websites: Drivers and barriers, 2014.³¹²

5.25.7. Data compilation

This factsheet is based on data compiled by Elsa Costa e Silva, Researcher – Communication and Society Research Centre (CSRC), University of Minho and Mariana Lameiras, Senior Academic Fellow – United Nations University Operating Unit on Policy-Driven Electronic Governance (UNU-EGOV).

³¹² <https://bit.ly/2EEc9T>.