



## 5.26. RO – Romania – National legal summary<sup>313</sup>

The provisions of the revised Audiovisual Media Services Directive (AVMSD) related to video-sharing platforms (VSPs) are transposed into the Law amending Audiovisual Law No. 504/2002 (the Audiovisual Law).

### 5.26.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Law no. 502/2002, as subsequently amended (consolidated version)<sup>314</sup> by Law no. 190/2022 for the amendment and completion of the Audiovisual Law no. 504/2002, for the amendment and completion of the Government Ordinance no. 39/2005 on cinematography, as well as for the amendment of Law no. 41/1994 on the organisation and functioning of the Romanian Broadcasting Company and the Romanian Television Company (Legea audiovizualului nr. 504/2002 , cu modificările și completările aduse prin Legea nr. 190/2022 pentru modificarea și completarea Legii audiovizualului nr. 504/2002, pentru modificarea și completarea Ordonanței Guvernului nr. 39/2005 privind cinematografia, precum și pentru modificarea Legii nr. 41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune, Monitorul Oficial 651).<sup>315</sup>
- Government Decree No. 39/2005 on Cinematography (Ordonanța Guvernului nr. 39/2005 privind cinematografia).<sup>316</sup>

### 5.26.2. 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.

---

<sup>313</sup> The factsheet on Romania incorporates feedback received from Ruxandra Minea-Cristea from the National Audiovisual Council (CNA), during the 2021 and 2022 checking rounds with the national media regulatory authorities.

<sup>314</sup> <https://legislatie.just.ro/Public/DetaliiDocumentAfis/214210>

<sup>315</sup> <https://legislatie.just.ro/Public/DetaliiDocumentAfis/256901>.

<sup>316</sup> <http://legislatie.just.ro/Public/DetaliiDocument/184479>.



**Table 46. 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: Romanian response to European Audiovisual Observatory standardised survey

#### 5.26.2.1. VSP service

Article 1.11 of the Audiovisual Law defines the term “video-sharing platform service” by transposing the text of the revised AVMSD verbatim, as follows:

*video-sharing platform service – the service whose main purpose or a dissociable section thereof or an essential functionality thereof is to provide the general public with user-generated programming or video material, or to provide both categories, for the purpose of informing, entertaining or educating, for which the video-sharing platform provider does not have editorial responsibility, through electronic communications networks, as are regulated by Government Emergency Ordinance No. 111/2011 approved with amendments and additions by Law No. 140/2012 with subsequent amendments and additions, the organisation of which is established by the video-sharing platform provider, including by automatic means or algorithms, in particular by display, marking and sequencing.*

#### 5.26.2.2. VSP provider

Article 1.41 of the Audiovisual Law 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”.

#### 5.26.2.3. User-generated video

Article 1.39 of the Audiovisual Law defines the term “user-generated video” by transposing the text of the revised AVMSD verbatim, as follows:



*user-generated video material - a series of moving images with or without sound that is a separate element, regardless of its length, and that is created by a user and uploaded to a video-sharing platform by that user or any other user.*

#### 5.26.2.4. “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.

#### 5.26.2.5. “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.

### 5.26.3. 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.

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

#### 5.26.3.1. General provisions

Article 40 of the Audiovisual Law states that audiovisual media services must not contain:

*a) incitement to violence or hatred against a group of persons or a member of a group, based on considerations such as sex, race, color, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, belonging to a national minority, wealth, birth, disability, age, sexual orientation or chronic contagious or non-contagious disease,*



*b) public incitement to commit terrorist offenses, as provided by Law no. 535/2004 on the prevention and combating of terrorism, as subsequently amended and supplemented.*

Article 39 of the Audiovisual Law states that the provision of programmes that “may affect the physical, mental or moral development of minors, especially programmes that contain pornography or unjustified violence” is forbidden. The same Article states that such programmes can be broadcast if it is ensured that minors cannot see them, either by choosing the time of the broadcast or using conditional access systems.

According to Article 42<sup>7</sup> of the Audiovisual Law, VSP providers are required to take appropriate measures to protect:

- a) minors from programmes, user-generated video materials and audiovisual commercial communications which may impair their physical, mental or moral development, in particular programmes that contain pornography or unjustified violence, according to the provisions of art. 39 para. (1);*
- b) the general public from programmes, user-generated video materials and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group, based on reasons such as sex, race, colour, ethnicity or social status, genetic characteristics, language, religion or belief, political or other opinion, membership of a national minority, wealth, birth, disability, age or sexual orientation or chronic non-contagious disease;*
- c) the general public from programmes, user-generated video materials and audiovisual commercial communications containing content whose dissemination constitutes a public provocation to commit criminal offences under Law No. 535/2004 (on preventing and combating terrorism), with subsequent amendments and additions, or to Law No. 196/2003 on the prevention and combating of pornography, or crimes of a racist and xenophobic nature.*

Article 29 of the Audiovisual Law, in paragraph (1) sets down the conditions that commercial communications need to comply with, such as being easily identifiable as such, respecting human dignity, not including or promoting discrimination, be prejudicial to health and safety, encouraging indecent or immoral behaviour etc. In line with paragraph (2), audiovisual commercial communications must not cause any “moral, physical or mental harm” to minors, and especially must not encourage minors to buy or rent a product or service, by exploiting their lack of experience or credulity, or encourage minors to convince their parents to buy goods or services advertised; such audiovisual commercial communications must not exploit the special trust that minors have in parents, teachers or other persons, or show, without justification, minors in dangerous situations.

In relation to VSPs, Article 42<sup>8</sup> (1) stipulates the following:

*The video-sharing platform providers under Romanian jurisdiction are required to take action to comply with the provisions of art. 29 para. (1) and (2), both with respect to audiovisual commercial communications which are promoted, marketed or organized*



*by those providers, and in respect to audiovisual commercial communications which are not promoted, marketed or organized by them, taking into account the limited control exercised by the respective video sharing platforms over these audiovisual commercial communications.*

#### 5.26.3.2. 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, Article 42<sup>8</sup>(7)a) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:

*including and applying in the terms and conditions of the video-sharing platform services the requirements derived from the application of the provisions of Article 42<sup>7</sup>.*

#### 5.26.3.3. 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 42<sup>8</sup>(7)b) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:

*including and applying in the terms and conditions of the video-sharing platform services the requirements provided for in Article 29 (1) and (2) for audiovisual commercial communications that are not promoted, marketed or organized by the video-sharing platform providers.*

#### 5.26.3.4. 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 42<sup>8</sup>(7)c) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:

*the inclusion a functionality by which users who upload user-generated video materials to declare whether such video material contains audiovisual commercial communications to the extent that they are aware of it or to the extent that it can be reasonably assumed that they are aware of it.*



#### 5.26.3.5. 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 42<sup>8</sup>(7)d) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:

*establishment and use of transparent and easy-to-use mechanisms that allow users of video-sharing platforms to report or signal to the respective video-sharing platform provider the content referred to in Art. 42<sup>7</sup> provided on its platform.*

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

Regarding the measure consisting in establishing and operating systems through which VSP providers explain to users of VSPs what effect has been given to their reporting and flagging initiatives, Article 42<sup>8</sup>(7)e) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:

*establishment and use of systems through which video-sharing platform providers explain to users of these platforms what effect has been given to the reporting and signalling referred to in point (d).*

#### 5.26.3.7. 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 42<sup>8</sup>(7)f) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:

*establishment and use of systems that allow age verification of users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors.*



#### 5.26.3.8. 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 42<sup>8</sup>(7)g) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:

*establishment and use of easy-to-use systems allowing users of video-sharing platforms to classify the content referred to in Art. 42<sup>7</sup>.*

#### 5.26.3.9. 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 42<sup>8</sup>(7)h) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:

*provision of parental control systems that are under the control of end users with respect to content which may impair the physical, mental or moral development of minors.*

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

Regarding the measure consisting in establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the VSP provider in relation to the implementation of the measures, Article 42<sup>8</sup>(7)i) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:

*establishment and use of transparent, easy-to-use and effective procedures for the managing and resolving users' complaints to the video-sharing platform provider in relation to the application of the measures provided for in points (d) to (h).*

#### 5.26.3.11. 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 42<sup>8</sup>(7)j) of the Audiovisual Law transposes the text of the revised AVMSD verbatim, as follows:



*establishment of effective measures and tools for education in the field of audiovisual media and raising users' awareness of those measures and tools*

#### 5.26.3.12. 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, 42<sup>8</sup>(8) of the Audiovisual Law transposes in full the revised AVMSD, as follows:

*Personal data of minors collected or generated by video-sharing platform providers by any means, based on the application of the provisions of para. (7) points (f) and (h) shall not be processed for commercial purposes, such as direct marketing, profiling and behavioural advertising.*

#### 5.26.3.13. Other relevant provisions related to the protection of minors

N/A.

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

N/A.

#### 5.26.3.15. 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 29(5) of the Audiovisual Law, audiovisual commercial communications for alcoholic products must not encourage the excessive consumption of these drinks and cannot target minors in particular. Also:

*audiovisual media services providers are encouraged to develop codes of conduct regarding audiovisual commercial communications, in compliance with the requirements set forth in art. 61, which have as main purpose at least the following: effectively reducing the exposure of minors to audiovisual commercial communication for alcoholic beverages, as well as food products and beverages containing nutrients and substances with a nutritional or physiological effect, especially fats, trans-fatty acids, salt or sodium and sugars, the excessive consumption of which is not recommended in the overall diet. Such audiovisual commercial communications must not highlight the positive quality of the nutritional aspects of such food and drink products (Art. 29(9)).*





Furthermore, Article 42<sup>8</sup>(3) uses the provisions of the revised AVMSD as follows:

*Regarding video-sharing platform services, the use of co-regulation and self-regulation through codes of conduct is encouraged in order to effectively reduce children's exposure to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fats, trans-fatty acids, salt or sodium and sugars, the excessive consumption of which is not recommended in the overall diet.*

#### 5.26.3.16. Other relevant information

N/A.

### 5.26.4. 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.

The Audiovisual Law transposes the text of revised AVMSD in Article 42<sup>8</sup>(6) in this regard:

*The measures mentioned in para. (1) and (2) are the responsibility of all video-sharing platform providers under Romanian jurisdiction and are established according to the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users who created and/or uploaded the content, as well as the general public interest, these measures having to be feasible and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided.*

### 5.26.5. 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 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 video-sharing platform 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).

#### 5.26.5.1. Regulatory body

The competent regulatory body is the National Audiovisual Council (CNA).<sup>317</sup>

#### 5.26.5.2. Existence of a registration/notification system

The Audiovisual Law gives the CNA legal power to regulate VSPs in Romania. According to the provisions of Article 42<sup>6</sup>:

*(1) The Council draws up, maintains and displays on its website an updated list of video-sharing platform providers established or considered to be established on the territory of Romania and specifies the criteria that formed the basis for establishing jurisdiction, according to the provisions of Art. 42<sup>5</sup>.*

*(2) The Council shall communicate to the European Commission the list mentioned in para (1), including any updates thereto.*

*(3) The Council shall inform the European Commission, without undue delay, of any conflicts of jurisdiction concerning the providers of video-sharing platforms, which could not be resolved by an agreement between Romania and another Member State of the European Union.*

#### 5.26.5.3. Compliance, enforcement and sanctioning powers

The Audiovisual Law, in Article 42.9(1) states:

*1) If the content of a video-sharing platform violates the provisions of Art. 42<sup>7</sup> and 42<sup>8</sup> and no other effective means are available to prohibit the violation of these provisions and to avoid the risk of serious harm to the collective interests of the public, the Council may request:*

- a) video-sharing platform providers to remove illegal content or restrict access to it or display a warning to users when accessing such content;*
- b) service providers providing storage space for video-sharing platforms to remove, disable or restrict access to a video-sharing platform;*

---

<sup>317</sup> <https://www.cna.ro/>.



*c) registry operators who allocate domain names for video-sharing platforms to remove the domain name of the video-sharing platform.*

*(2) The Council (CNA) may request the video-sharing platform providers to take the measures provided in par. (1) lit. a) only on the basis of a reasoned decision. The decision must be sufficiently precise and duly reasoned, so as to enable the supplier to take an informed decision as to the actions to be taken to comply with the decision received. The decision can be appealed to the administrative litigation court, under the conditions of the Administrative litigation Law no. 554/2004, with subsequent amendments and additions.*

*(3) The Council may request the hosting service providers and the registry operators to take the measures provided in par. (1) lit. b) and c) based on a reasoned decision or based on a final court decision.*

*(4) In the activity of supervision and control, the Council may request the National Institute for Research and Development in Informatics – ICI Bucharest, in the case of the register of domains and subdomains in the «.ro» area, to transmit data or information that may lead to the identification of persons providing an audiovisual media service, a video-sharing platform service, or who uploads and generates video content on a sharing platform. The requested data shall be sent to the Council without delay in accordance with the legal provisions on the protection of personal data.*

*(5) The full mechanisms of the implementing measures will be established by the Council. These mechanisms should be easy to access and use and allow notifications to be sent by electronic means.”*

Also, Article 2 (2<sup>1</sup>) stipulates the following:

*The provisions of this law also apply to the following categories:*

- a) video-sharing platform providers under the jurisdiction of Romania;*
- b) video-sharing platform providers under the jurisdiction of a state that is not a member of the European Union, but whose content can be accessed on the territory of Romania.*

#### 5.26.5.4. Development of self- or co-regulatory codes or schemes

Article 42<sup>10</sup> of the Audiovisual Law stipulates that the can encourages the use of co-regulation in implementing the measures for VSPs provided for in Articles 42<sup>7</sup> and 42<sup>8</sup> par. (6) – (8). Furthermore, it is prescribed that CNA can establishes, through decisions, the necessary mechanisms to evaluate the adequacy of the measures implemented by the VSPs.



#### 5.26.5.5. Out-of-court redress mechanisms for users

No specific provision of the Audiovisual Law deals with this issue, but nothing prevents users from asserting their rights before a court.

#### 5.26.5.6. Rights before a court for users

No specific provision of the Audiovisual Law deals with this issue, but nothing prevents users from asserting their right before a court.

### 5.26.6. Studies, reports and research

N/A.

### 5.26.7. Data compilation

This factsheet is based on the 2021 data compiled by Marius Dragomir, Director of the Center for Media, Data & Society. The 2022 update data was compiled Manuela Preoteasa, Associate Professor, University of Bucharest, and founder of EURACTIV Romania.