Mapping report of the rules applicable to video-sharing platforms: Illegal and harmful content online

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Overview

1. The purpose of the mapping

2. Methodology, scope and structure

3. Key findings

4. Stakeholders’ perspective
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2. Methodology, scope and structure
3. Key findings
4. Stakeholders’ perspective
1. The purpose of the mapping

- Project launched upon request of

- Following the adoption of the revised Audiovisual Media Services Directive 2018/1808 (revised AVMSD).

- To track the legal framework, current practices and ongoing reforms relating to the regulation of video-sharing platforms (VSPs).

- Focus on the protection of minors from harmful content and of the general public from illegal content and content that incites violence or hatred.
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Methodology

1. National experts
   An expert for each of the EU-27, Norway and the UK

2. A questionnaire
   filled in by national experts

3. National factsheets
   cross-checked by NRAs

4. Comparative analysis
   by an expert selected by the EAO

      A questionnaire
      filled in by industry stakeholders

      Industry stakeholders analysis
2. **Scope**

**Coverage**

27 EU countries
+ UK
+ Norway

As of May 2021
2. **Structure of the report**

1. Definitions
2. Obligations and measures
3. Practicability of the measures imposed on VSPs
4. Regulation and enforcement
5. Regulatory challenges
6. Country profiles
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3. State of implementation

Implementation by country within the EU

- NOTIFIED: 63%
- ONGOING: 37%

10
17
3. Definitions

- **Identical to AVMSD** in most cases, but e.g.:
  
  - **DE** defines video-sharing services, without reference to platforms
  
  - **CZ, DE, SE** covering natural and legal persons in the definition of provider

  - **GB**: the term “video” is defined so as to include programmes and user-generated videos

  - **“Principal purpose”, “dissociable section” and “essential functionality”**: With the Commission’s guidelines in mind, the majority of the covered territories opted out of providing definitions
3. Obligations and measures

- Adapting **terms and conditions**:
  - Article 28b (3)(a) AVMSD transposed verbatim in most cases
  - emphasis is put on the **easiness, understandability and simplicity**, as well as the **accessibility** of the VSP’s terms and conditions.
  - **AT, BG**: terms and conditions have to be reported to the NRA.
  - **DE**: VSPs obliged to agree with users that the distribution of illegal commercial communications is prohibited.
  - **LV, NL, SI**: adaptation of the terms and conditions fall under the self-regulatory regimes.
3. Obligations and measures

- **Commercial communications:**
  
  - Article 28b (3)(b-c) AVMSD transposed verbatim in most cases.
  
  - **BE FR, BG, EE, FI, FR:** emphasis on the requirement that the information for users must be clear, simple and understandable.
3. Obligations and measures

- Measures allowing users to **report or flag content**:
  - Reporting system requirements under Article 28b (3)(d-e) AVMSD are **all included in national legislations**
  - Emphasis on the importance of **accessibility, availability, effectiveness, transparency and manageability** of the reporting systems to be put in place by the VSPs.
3. Obligations and measures

- Content which may impair the **physical, mental or moral development of minors**:
  
  - Article 28b (3)(f-g-h) AVMSD transposed verbatim in most cases
  
  - Some cases require also measures to safeguard the morality of the services provided to minors and the use of personal identification codes (**EE**) or “digital identification instruments” (**ES**).
  
  - **EE, LV, NL, SI** refer to self-regulatory mechanisms
  
  - **FR, IE, PL**: an active role on the part of the NRA is identified in terms of their mandate to specify the rules
Handling and resolution of users' complaints:

- Article 28b (3)(i) AVMSD transposed verbatim in most cases

- **CZ, DE** emphasise the obligation to include the information for the user on all possible out-of-court complaint-resolution mechanisms in the information regarding the VSPs complaint procedures themselves

- **FR, IE**: implementation designed by NRAs.

- Self-regulatory schemes are to include these provisions as well in three cases (**LV, NL and SI**). In one case (**PL**), dispute resolution is envisaged using the system of mediation
3. Obligations and measures

- **Media literacy:**
  - Article 28b (3)(j) AVMSD transposed verbatim in most cases
  - **AT:** VSPs can provide access to existing platforms with such information, provided by the body established to support the national communications regulatory authority
3. Obligations and measures

- Processing of **personal data of minors** for commercial purposes:

  - Article 28b (3) AVMSD transposed verbatim in most cases
  - this prohibition has already been introduced in other legislative sets *(AT, GB, IE)*
  - **SI**: data processing may only be undertaken for age verification purposes
  - **LV, NL, SI**: measures to be included in self-regulation and the respective codes of conduct
3. Practicability of measures

Key concepts (Article 28b (3) AVMSD):
Size of the VSP; Nature of the content; The harm it may cause; The characteristics of the category of persons to be protected; The rights and legitimate interests at stake; General public interest:

- **BE FR, BE NL, BG, CZ, FI, HU, LU, RO, SI** include the AVMSD criteria
- Some of them offer further criteria
- **BE NL, CZ, FR**: NRA and/or government to issue further guidance
- No criteria in a minority of cases (**AT, CY, EE, NO, PT**)
3. Regulation and enforcement

Regulatory bodies in charge

- Current NRA will oversee VSPs
- New regulatory authority envisaged

A new **Media Commission** will be in charge of the VSPs and will eventually absorb the current BAI

The new **ARCOM** will result from the merge of the CSA and HADOPI
3. Regulation and enforcement

- Notification/registration system (Article 28b (5) AVMSD):
  - Notification/information-request procedures in 27 cases (AT, BE, FR, BE NL, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK)
  - Some cases require court registrations in addition to registrations with the regulatory authority (HR), business registries or notaries (EE) or the relevant ministry (LU).
3. Regulation and enforcement

- **Notification/registration system (Article 28b (5) AVMSD):**

  - notification/registration conditions: 14 legislations do not prescribe the details, which are to be determined by the competent authority (CY, DE, DK, ES, FI, FR, GB, GR, LV, PT, PT, RO, SE, SI).

  - Where determined, the requested data predominantly relates to contact details and legal representation, as well as jurisdictional determinations (AT, BE FR, BE NL, BG, EE, HR, HU, LU, MT, NL), the description of VSP services (BE FR, BE NL, CZ, HU, LU) and the drafting of general conditions of use of the VSPs (BG, CZ – for the services in existence prior to adoption of legislation).
3. Regulation and enforcement

- **Notification/registration system (Article 28b (5) AVMSD):**
  - **LU:** obligation on the part of VSPs to provide the national regulatory authority with free and unencrypted access to VSP services for monitoring purposes
  - **NL:** obligation on the part of VSPs to publish all the notification data
3. Regulation and enforcement

- **Compliance, enforcement and sanctioning powers:**
  
  - Article 28b (5) AVMSD is incorporated mostly verbatim
  
  - **DE, NL, GB:** Reliance on self- and co-regulation
  
  - **BE FR, CY, CZ, DE, DK, GB, GR, HR, HU, LU, LV, MT, RO, SE:** the enforcement of regulatory powers over VSPs is envisaged in three consecutive steps:
    - assessment of measures taken by VSPs;
    - request for adaptation of measures, if found inappropriate;
    - sanctioning, in case of compliance failure.
3. Regulation and enforcement

- Compliance, enforcement and sanctioning powers:
  
  - Sanctioning powers (Article 28b (5) AVMSD) in general relate to financial fines. Other sanctions:
    - DE: prohibition, blocking, withdrawal and revocation;
    - HU: suspension of service, removal of non-compliant service providers from the register, prohibition of the unlawful conduct;
    - RO: request to remove illegal content or restrict access to it or explicitly display a warning, require a hosting service provider to remove, disable or restrict access to a VSP, require registry operators to remove the domain name.
3. Regulation and enforcement

- Compliance, enforcement and sanctioning powers:
  - Data protection obligations are assumed by default to be entrusted to data protection authorities, as well as ombudsman’s offices for consumer protection related matters (DK, SE)

- Development of self- or co-regulatory codes or schemes:
  - great emphasis on self- and co-regulatory mechanisms
3. Regulation and enforcement

- Out-of-court redress mechanisms for users (Article 28b (7) AVMSD):
  - **BE FR, DE, DK, FI, FR, GB, MT, SE, SI**: settlement of disputes is entrusted to NRAs
  - **AT, BG, CZ, DE, GR, NL, PT**: Existing arbitration/mediation/consumer resolution mechanisms. **CY, HU, IE, LU** detailed implementation has not yet commenced
  - **EE**: out-of-court settlement mandate is jointly entrusted to the relevant consumer committee and the Director General of the national regulatory authority.
  - **PL**: mediation is envisaged
3. Regulation and enforcement

- Rights of users before a court (Article 28b (8) AVMSD):
  - AT, BE FR, BE NL, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, LU, LV, NL, PL, RO, SE: regular court procedures are available for users, hence no specific provisions in this regard were deemed necessary.
  - BG, CY, CZ, MT, PT, SI: specific references to possible court procedures are included in the relevant legislations.
3. Regulatory challenges (survey)

- **Main challenges:**
  - Early to assess
  - Some trends:
    - identification of VSPs;
    - information asymmetry, difficulty in accessing VSPs’ data and monitoring their activity;
    - organisational changes and workload;
    - implementing rules with due consideration for the variety amongst the providers;
    - challenges linked to the cross-border nature of VSPs;
    - protection of pluralism/diversity;
    - ...
3. Regulatory challenges (survey)

- Experience with measures put in place by VSPs prior to the implementation of the AVMS Directive:
  - Little information at this point
  - **Ofcom**: evidence suggests that the: ...*awareness of safety measures to protect users is low, with signs of confusion about which measures are available and the impact of those measures.*
3. Regulatory challenges (survey)

- Cooperation between relevant authorities with regards to the new rules concerning VSPs, in particular in cross-border cases:
  
  - universally held and firm belief in the benefits and necessity of such cooperation to enable an effective application of the revised AVMSD
  
  - consistent application of the harmonised rules also make it easier for VSP providers to understand what is required
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4. The stakeholders’ perspective (survey)

General feedback:

• Lack of clarity may accentuate competition distortions between global and local players which don’t necessarily have the same business model and the same financial resources.

• Some of the new rules can prove challenging to implement.

• A homogenous one-size-fits-all approach is not a viable solution.

• When it comes to age verification, robust technological solutions do not currently exist.
Adapting T&C to include obligations:

Most respondents already include many of the newly introduced obligations, but...

- they fear the overlap of different legal systems, which could inhibit the development and innovation of global services and reduce adaptability to emerging challenges, and

- the overlap with initiatives to regulate online content in different jurisdictions, which could introduce regulatory uncertainty.
Reporting and flagging mechanisms:

- Most respondents have already put in place these mechanisms.
- Some are trying to find the right balance between providing a user-friendly interface while addressing all the legal requirements.
- As an indication, 35,000 people work on security and safety at Facebook, 15,000 of whom review content covering the most widely used languages, reviewing around 2 million pieces of content every day.
- Some respondents have implemented self-moderation tools to reduce the need for reporting and flagging.
4. The stakeholders’ perspective (survey)

Strengthened cooperation between stakeholders and the relevant authorities:

- Common European standards are desirable.
- Need of a consistent approach to VSP regulation across member states and an effective solution to cross-border cases.
- Desirable cooperation with regulators to define policy, rather than a system which is just for checks and balances.
- I.e.: TikTok set a EMEA trust and safety hub to collaborate closely with regional regulators, policymakers, government and law enforcement agencies.
The VSP mapping report

- This is the first batch of the VSP mapping: focus on illegal and harmful content as of May 2021.

- Premiere for EPRA members at https://rm.coe.int/mapping-on-video-sharingPlatforms-2021-full-report/1680a43575

- Update to come in 2022 to reflect results of pending AVMSD transposition process.

- Second batch on commercial communications to come early 2023.
THANK YOU FOR YOUR HELP!

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