



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

EPRA 54th meeting - Special session: NRAs and VSP regulation  
21 October 2021

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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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# 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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## 2. Methodology

1.



### National experts

An expert for each of the EU-27, Norway and the UK

2.



A questionnaire filled in by national experts



A questionnaire filled in by industry stakeholders

3.



National factsheets cross-checked by NRAs

4.



Comparative analysis by an expert selected by the EAO



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

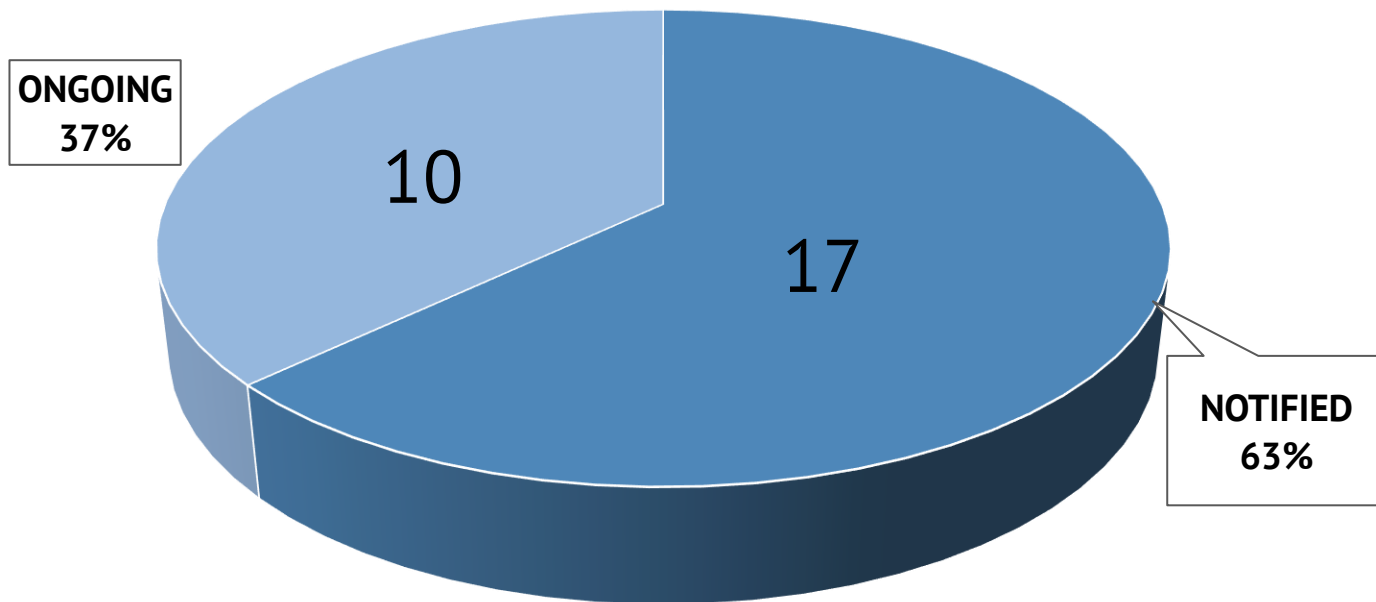


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### 3. State of implementation

Implementation by country within the EU



### 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

### 3. Obligations and measures

- **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

## 4. The stakeholders' perspective (survey)

### 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.

## 4. The stakeholders' perspective (survey)

### 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-sharing-platforms-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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