



**ERGA Subgroup 3**  
**Taskforce 2 on ‘Video-Sharing Platforms (VSPs) under the new AVMS Directive’**  
**Brussels, 9 April 2019**  
**Minutes**

*Attendees: CSA France (chair), CSA/VRM Belgium, CEM Bulgaria, SLKS Denmark, DLM Germany, TJA Estonia, BAI Ireland, ESR Greece, CNMC Spain, AEM Croatia, AGCOM Italy, CRTA Cyprus, NEPLADOME Latvia, NMHH Hungary, BA Malta, CvdM The Netherlands, KRRiT Poland, ERC Portugal, AKOS Slovenia, RVR Slovakia, MPRT Sweden, OFCOM UK, Medietilsynet Norway, RTÜK Turkey, European Commission.*

The Chair (CSA France) welcomed the participants and explained that the meeting will start with the presentation of the case studies identified under Workstream 1 and continue with the preliminary outputs of Workstreams 2 and 3.

**Workstream 1: analysis of four case studies**

The chair explained that the four case studies of possible Video Sharing Platforms (VSP) were selected based on the impression that such services could fulfil the criteria from Article 1 (1) (aa) of the revised AVMSD. The chair also explained that the work is also an exercise for NRAs’ exposure to such situations. The work should not be pre-empting the Commission’s work on the guidelines regarding the criterion of essential functionality. The deliverable at the end will be a framework of key questions, for each of the criteria, that NRAs may consider when assessing if a service is a VSP or not.

The preliminary assessment of the case studies is based on the criteria in the definition of Article 1 (1) (aa) of the Directive and does not take into account the geographical considerations set out in Article 28a.

The following cases were analysed and presented: Periscope (Greek NRA), TikTok (Dutch NRA), YouTube (Hungarian NRA), Facebook (French NRA). Unless otherwise stated, the views set out herein in respect of these services are those of the ERGA drafters.

Periscope

The application and website offer the upload of live video streaming for of a variety of topics. It is part of the Twitter group and streams can be linked on Twitter, but it is considered a stand-alone service, as it is also offered via other platforms (e.g. Facebook). It includes ads. Videos are available for 24 hours, searchable and organised by topics. Uploaders may decide on the accessibility of the user generated videos. The service clarifies that it has no editorial responsibility, but takedowns are possible, if video is in breach of Terms of service (violence, hate speech...). The aim of the service is clearly to inform, educate or entertain. The company is established in the US but has offices in the EU.

The members agreed that the service could likely be considered a VSP under the revised AVMSD criteria.

#### TikTok

This is an application with the principal purpose for creating and sharing short (music) videos, including live-streaming. It is established in China and has offices across Europe. It was the most downloaded app in 2018. It is of an economic nature with personalised ads and the app also collects personal data. It is possible to purchase virtual coins and give them to other users. A search function is provided and users may share personal data. The app is open to the general public and anyone can make an account without age restriction. TikTok has already over 500 million users globally (more than Snapchat or Twitter). The provider has no editorial responsibility and the possibility to report videos exists. Users decide whether they want to share immediately or delete already uploaded videos. The app, which provides for the organisation of content, has the purpose to entertain.

The members agreed that the service could likely be considered a VSP under the revised AVMSD criteria.

#### YouTube

The service provides access to audiovisual user generated videos to the public. There are 2 sources of revenue: Ad revenue and the subscription from the Premium service without ads. The principal purpose is to enable users to upload videos, which is prominent on the entire website. It has a high upload rate with 300 minutes of video content being uploaded every minute. Other of services include YouTube Originals, YouTube live, YouTube gaming, YouTube movies (VOD, dissociable), YouTube Music. It is debatable whether YouTube has limited (if any) editorial responsibility, there is no preliminary filtering apart from ContentID. YouTube has contracts in place with some content creators, but these are not public so it is difficult to identify any potential editorial responsibility.

#### Facebook

Facebook is used for many purposes, e.g. sharing stories, pictures, opinions, videos..., so its principal purpose is not easy to determine. According to Facebook, between 11 and 25% of the content is audiovisual, but there is no exact data available as it is difficult to quantify and compare different types of content (e.g. are lines of text in a post equal in value to one video)?

Among the potential dissociable sections is Facebook Watch, which collects all the available videos from other areas, such as companies' pages, newsfeed videos. Other sections include Facebook Gaming.

It is possible to monetize videos and many tools for audiovisual media, such as auto play, are available. The Commission's guidelines on the "essential functionality" principle should bring more clarity whether Facebook or parts of it could be identified as VSPPs.

The Chair thanked the drafters for their work and the members for their contributions to the set of key questions regarding the identification of VSPPs. He explained that there are 10 more case studies available and that the results will be published on the Digital European Toolkit.

The Subgroup would also like to organise a workshop in September featuring VSPPs on topics such as their current and planned measures.

**Workstream 2: review of the existing measures put in place by VSP-like services**

The aim of the exercise was to identify potential inconsistencies between the current measures implemented by VSPs and the requirements of the revised AVMSD, based on Art 28b para 3. For the sole purpose of this exercise, the reviewed services were considered VSPs. They were YouTube, Vimeo, Dailymotion and MyDirtyHobby. The following assessment of these services is that of the Drafter and does not represent the views of the national regulatory authorities responsible for regulating each service.

	YouTube	Vimeo	Daily Motion	MyDirtyHobby
<b>Terms and Conditions para 3 (a) and (b)</b>	Community guidelines according to the requirements of AVMSD. Minors could be asked to purchase products (not in line with the AVMSD).	Terms of Use, advertising is only permitted for Professional and Business account.	Terms of Use exist. Unclear whether they meet the requirements to protect minors from inappropriate commercial communication.	-
<b>Declaration of audiovisual commercial communication para 3 (c)</b>	Possibility exists, but users are not forced to declare	Only in Vimeo Pro and Business (for professional purposes).	-	-
<b>Reporting and flagging para 3 (d)</b>	Yes. Sign in necessary.	Yes. Not possible to report comments or channels	Yes. Not possible to report channels. Sign in necessary to report videos.	-
<b>Information systems about reports para 3 (d)</b>	Yes. Users can track the status of reported content.	-	-	-
<b>Age verification systems para 3 (f)</b>	-	-	-	Yes (for closed groups). However, some pornographic content is freely accessible.
<b>System to rate content para 3 (g)</b>	Yes – Uploader can enable age restrictions.	Yes – Uploader chooses rating and selects categories.	Yes – Uploader can enable age restrictions (only effective if family filter on).	-
<b>Parental control systems para 3 (h)</b>	Yes. Possible restricted mode and YouTube Kids app.	-	Family filter option	-
<b>Users' complaints para 3 (i)</b>	Notification to user does not specify reason for content removal. Appeal possible within 30 days.	-	Only for the violation of copyright,	-
<b>Media literacy measures and tools para 3 (j)</b>	-	-	-	-

The Chair explained that the results of Workstream 2 will be published on the Digital European Toolkit.

### **Workstream 3: NRAs' responsibilities resulting from revised AVMSD**

The Chair explained that the working document of Workstream 3 contains the mapping of NRA tasks resulting from the revised AVMSD and a set of question with recommendations that NRAs might find useful when following the tasks.

NRAs will have the following responsibilities: Assessment of measures taken by VSPs (28b para 5), Assessment of national codes of conduct (Art. 4a para 1, Art 28b para 4), Out of court redress mechanisms (Art. 28b para 7) when such mechanisms are entrusted to NRAs in the national transposition.

Four blocks of questions have been identified (last one is optional and depends on members state's transposition) in the working document, distributed to the members.

#### First block of questions – The assessment of the appropriateness of the measures taken by VSPs

Representatives at the Task Force meeting discussed their expectations regarding regulator-to-regulator complaints about video-sharing platform services, and what they felt would be appropriate timeframes for regulators in EU Member States to respond to any such complaints. The Chair suggested that these timeframes should be realistic and take into consideration how much the user would be affected if the response took too much time.

The Greek NRA drew attention to the fact that on the one hand some audiovisual NRAs might not have the competence to regulate VSPs and, on the other, VSPs differ so not all questions may be relevant for each case. The Commission clarified that, according to the text of the AVMSD (Art. 28b para 3) VSPs must apply the measures listed in that paragraph. This will not necessarily result in a uniform application for every VSP and national regulators should take into account certain parameters such as the potential harm, the size and nature of service provided. .

#### Second block of questions – The 'backstop'

The AVMSD provides a backstop for national regulators who are entrusted with the assessment of the appropriateness of the measures to be taken by the VSPs under their jurisdiction. The Chair explained that decisions by the NRA, in case measures taken by VSPs are found inappropriate/inadequate, must take into account size of the service. There should not be disproportionate obligations put on the provider. On the question of the Italian NRA regarding who should raise a problem to the attention of the NRA (users associations, police...), the chair responded that NRAs should actively monitoring the VSP's policy and not only wait for user's complaints.

#### Third block of questions – Settlement of disputes between VSP providers and users

The text of the revised AVMSD does not provide much detail about out-of-court redress mechanisms, apart from the obligation for all Member States to make it available to all citizens.

The Commission explained that, as a first step, the user complains to the VSP (complaint mechanism "within the platform"). As a second step, if the user is not satisfied with the result of the first step, MS are obliged to ensure that an impartial out-of-court redress mechanism is available to resolve disputes. As a third step, MS must ensure that users can assert their rights before a court. The Commission will clarify whether MS are expected to establish impartial out-of-court mechanisms even if they have no jurisdiction over a VSP.

Although members were clear about the fact that disputes should be sorted out, no matter where the person complaining resides and where a VSP is established, the Irish NRA was of the view that the Country of Origin principle requires disputes to be formally adjudicated in accordance with the law and approach to transposition adopted in the Member State in which a VSP provider is established. The German NRA was of the opinion that the national NRA of the user should try to help without simply pointing out to the NRA of jurisdiction.

The Chair concluded that the uncertainty regarding the role of NRAs may be sorted out thanks to the legal analysis provided by the European Commission. Corresponding cooperation mechanisms between NRAs may therefore be discussed on that basis in the context of this Taskforce. The Chair also suggested to slightly change the approach for the drafting of the recommendations. Instead of providing answers to each specific question, it was agreed that the drafters would write short paragraphs touching upon some (if not all) the issues raised by the three blocks of questions. This would help to meet some members' request not to put forward prescriptive and too detailed solutions.

### **Next steps**

The Chair explained that the workstreams will continue their work and that a first outcome will be shared at the Plenary in June. The next Taskforce meeting is scheduled for September.