



ERGA Subgroup 1

2023

**Consistent implementation and enforcement of the European
framework for audiovisual media services**

Deliverable 3

**Learning from the practical experiences of NRAs in the regulation
of vloggers (Deliverable 3)**

Public report

1. Introduction

The regulation and supervision of vloggers has been an important focus of ERGA for several years. In its 2018 Analysis and Discussion Paper, accompanying the revision of the Audiovisual Media Services Directive (AVMS Directive)¹, ERGA already highlighted challenges and reflected varying regulatory perspectives within ERGA on the question whether vlogger channels or comparable audiovisual offers can be considered as audiovisual media services (AVMS).²

The terms ‘vloggers’ or ‘vlogger channels’ were chosen at the occasion of ERGA’s previous activities and also referred to in its Work Programmes. However, it should be noted that in practice, also other terms or labels are used for such activities, such as: “YouTubers”, “YouTube channels”, “influencers”, “creators” or “uploaders”. All these activities have in common that they consist of audiovisual content, mostly user-generated, which is uploaded on video sharing platforms and - depending on the type of platform - is often organized and distributed via channels.³

In 2021, ERGA published its first vloggers report (Report: Analysis and recommendations concerning the regulation of vloggers) with the aim to identify common indicators for the assessment of vloggers content as (on-demand) audiovisual media services in terms of the AVMS Directive. ERGA-members agreed on the report’s main observations and findings, namely that many vloggers have become professional market players, and that their content can be regarded as an audiovisual media service in their own right, directly competing with traditional media services in regards of audience shares and advertising revenues. Further, the number of subscriptions and views of vloggers content indicate they have a mass media impact. As a consequence, the need for unambiguous regulation and adequate supervision in regards of the core media values, such as the protection of minors and transparency of commercial communications, was supported by all ERGA-members.⁴ Interesting national approaches were identified in the first report. Those observations and findings fed into suggestions and recommendations for the interpretation of the key criteria of the notion of on-demand (OD) AVMS when applied on the specific situation of vloggers.⁵ Many ERGA-members expressed the need for a follow-up in 2022, and to focus more on the regulatory requirements for vloggers. This second report explored the practical challenges National Regulatory Authorities (NRAs) were facing such as how to identify and localize vloggers. Further, the report provided an overview of national practices regarding the regulation and supervision of advertising and other types of commercial communication in vloggers content. Just like the first report, the second report is a mapping of some of the best practices and concludes with recommendations.

Aim of the current report

ERGA’s first vloggers report identified common interpretation problems, such as the lack of (numerical) thresholds in regards of the economic service criterion or the notion of significant proportion of the public. Basic interpretation issues also arose in relation to the definition element “mass media which inform, entertain or educate the general public.” These interpretation issues pose many problems in the daily practice of NRAs. The first ERGA vloggers report recognised already that vloggers may also provide linear services (live streams). While the current report has a focus on the question when vloggers’ activities can be defined as on-demand AVMS, it does not exclude the possibility that in some cases they can be considered as linear AVMS.

Therefore the time is right to provide an update of the observations and findings of the previous reports. In this sense this third report is a combination of the two previous reports by addressing again qualification and definition issues. First and foremost, the goal is to see whether there are new insights and lessons learned in some countries which are worth sharing within the ERGA-network. In the first part of the report (paragraph 2.1) ‘the definition criteria in practice’ are discussed, in which we address the three definition criteria that came

¹ Directive (EU) 2018/1808.

² [ERGA SG3 – Analysis and Discussion Paper to contribute to the consistent implementation of the revised AVMSD](#) (2018).

³ ERGA SG1 – Consistent implementation and enforcement of the new AVMSD framework: Report – [Analysis and recommendations concerning the regulation of vloggers](#) (2021), p. 3.

⁴ ERGA SG1 – Consistent implementation and enforcement of the new AVMSD framework: Report – [How to identify and localise vloggers and regulate their commercial communication?](#) (2022), p. 4.

⁵ ERGA SG1 – Consistent implementation and enforcement of the new AVMSD framework: Report – [Analysis and recommendations concerning the regulation of vloggers](#) (2021), p. 26.

up most during interviews with NRAs: economic service (2.1.1.), principle purpose (2.1.2.) and general public (2.1.3.).

This report also explores the NRAs experiences regarding practical issues and achievements in the area of supervision and enforcement. Paragraph 2.2. addresses the practical experience in the assessment of commercial communications, including a focus on NRAs best practices in assessing whether a video containing commercial communications is targeting minors (2.2.1.). Paragraph 2.3 gives an overview of several best practices of monitoring and enforcement strategies of NRAs. Lastly, paragraph 2.4. describes the different steps NRAs can take in their communication strategies regarding vloggers.

Sharing best practices is a key element of the cooperation within ERGA and can contribute to a more common approach in some areas which are still considered to be complex and challenging. On the other hand the report recognizes national markets can differentiate a lot and that there is no one-size-fits-all solution. Also, bearing in mind the discretionary powers of the NRAs, this report should not be considered as a strict guideline which could also be out-of-date soon due to rapidly changing developments. The report's recommendations should be seen as a toolbox from which every NRA can select the instruments that are best equipped for the local situation.⁶

Methodology

While the first two ERGA vloggers reports are mainly based on desk research and the answers of ERGA members to questionnaires, a different method was chosen for this report. This time the input was mainly obtained from interviews with ERGA members. The selection of NRAs was based on aspects such as relevant expertise and experience with vloggers regulation and supervision and recent developments in countries. Gratefully, use was also made of the insights gained from the two previous reports. All of this resulted in interviews with eleven ERGA members.⁷ The list of questions, which addresses both the interpretation of definitions and criteria from the AVMS Directive by ERGA members and their practical experiences with registration, supervision, communication and enforcement, among other things, is included as an annex to this report. The ERGA Academy workshop, held in Naples on the 28th of June 2023, dealt analytically with the regulation of vloggers and focused on the relationship between minors and influencers. The relevant provisions and themes arising from the practical experience of regulators before and after the implementation of the revised AVMS Directive in Member States were discussed, building on the two previous reports on the regulation of vloggers. The discussions and presentations during this event have been taken into account in this report as well.

2. Practical experiences of NRAs

2.1. The definition criteria in practice

2.1.1. Economic service

Whether a vlogger can be qualified as an on-demand AVMS, depends on whether the vlogger can be seen as an economic service in accordance with articles 56 and 57 of the TFEU. This means that the service is usually provided in return for compensation or that the performance of the service provides material benefits in some other way. Several criteria or thresholds can help to determine economic services and exclude services that are not in competition with traditional broadcasters and cannot be considered mass media. During the interviews we asked NRAs how they determine whether a vlogger is an economic service and which thresholds, if any, they apply. The NRAs did not indicate many issues in deciding which thresholds to apply when determining whether there is an economic service. Whilst there are different approaches, they are limited to (a variation of) three factors or thresholds.

One possible criterion for determining an economic service, is to ascertain whether the service is registered with a local **Chamber of Commerce** or a tax administrator.⁸ Most NRAs use this as one of the deciding factors, but it can also be the sole criterion to determine whether there is an economic service. The rationale

⁶ ERGA SG1 – Consistent implementation and enforcement of the new AVMSD framework: Report – [How to identify and localise vloggers and regulate their commercial communication?](#) (2022), p. 4.

⁷ Interviewed NRA's: KommAustria (Austria), KRRiT (Poland), Medietilsynet (Norway), CvdM (Netherlands), Medienanstalt-NRW (Germany), RTK (Lithuania), AGCOM (Italy), VRM (Belgium/Flanders), CSA (Belgium/French community), CNMC (Spain), Arcom (France).

⁸ Best practice by: CvdM (Netherlands), KommAustria (Austria), Medietilsynet (Norway), RTK (Lithuania), KRRiT (Poland).

is that a provider that pursues economic or commercial activities, most likely needs to be registered at a local Chamber of Commerce or a tax administrator, in order to be able to perform certain tasks or duties.

When evaluating the economic service, it is also possible to set a **financial threshold**.⁹ The media-authorities that maintain such a threshold, have usually linked the height of the threshold to general income regulations. This does not mean that the income must be high enough for the vlogger to make a living exclusively from being a vlogger. Medietilsynet (Norway) put a threshold at approximately 6000 euros per year, as this would mean the service generates an income which exceeds the limit for tax-free income in Norway. With regard to vloggers who engage in "small" gainful activities (but are not registered with the in Chamber of Commerce) KRRiT (Poland) sets a financial threshold for those whose revenue is more than 75% of the minimum wage (approximately 600 euros per month). If they earn more than this, although they have unregistered gainful activities, they are qualified as an on-demand AVMS. KommAustria (Austria) excludes vloggers and other service providers from the obligation to pay a financial contribution to the authority if they are exempt from paying taxes, which results in a threshold of a yearly income of 60.000 euros. The threshold is different in every country, as it takes the various economic landscapes and national markets into account.

The NRAs without a financial threshold take a more general approach and cover **any form of economic activity**.¹⁰ Those NRAs require vloggers to earn money or obtain any material benefit. The monetisation of videos can be an important indication for economic activity. Part of the rationale behind this approach is the lack of authority or limited competences to access or retrieve the financial information required to assert whether a financial threshold is reached. Authorities also argue that the scope should be limited to services as defined by the TFEU and therefore should cover any form of economic activity.

Whether revenues or economic activities are sustainably realised, does not seem to play a major role. In the 2021 report, it was indicated that sustainability could be useful in assessing the economic service criterion. However, this suggestion appears to be outdated. Likely, this is due to the difficulty in determining a sustainable economic performance, as the income of vloggers usually fluctuates. An additional criterion such as sustainability of the economic activities, could be helpful in limiting the amount of vloggers under supervision. However, the NRAs currently do not indicate a necessity for limiting the amount of vloggers under supervision.

The approaches to determining an economic service vary, due to the different economic landscapes, local markets and the different competences of the authorities. A more common approach could be useful, but would have to take into account the differences between the local market situations.

Preliminary findings:

- ➔ NRAs apply different thresholds or criteria to determine an economic service, depending on the various markets and competences of authorities. The different approaches are limited to (a variation of) the following:
 - Registration with the local Chamber of Commerce or tax administrator;
 - Financial threshold linked to general income regulations;
 - Any form of economic activity.

2.1.2.Principle purpose

One of the - in practice most challenging - key criteria of the definition of on demand AVMS is that the principal purpose should be to inform, entertain, or educate the general public.¹¹

In the first ERGA vloggers report, several factors were identified that could be considered when evaluating this criterion. The report mainly focused on the content of the videos posted. It was noted that videos that inform, entertain, or educate the general public often have an entertainment element. As a consequence, the characteristic entertainment does not have distinctive value. An entertainment element implies that the video is presented in a way that has the potential to capture the interest of users, especially those who have not previously been drawn to the topic. This aligns with the wording that the content must be "intended for

⁹ Best practice by: KommAustria (Austria), KRRiT (Poland), Medietilsynet (Norway).

¹⁰ Best practice by: CvdM (Netherlands), Medienanstalt-NRW (Germany), RTK (Lithuania).

¹¹ This is also stated in recital 22 of the Audiovisual Media Services Directive.

reception" (Recital 21 AVMS Directive¹²: "by the general public").¹³ It is often fairly straightforward to assess whether channels (and the videos on there) are intended to inform, entertain, or educate the general public. However, how do the NRAs evaluate channels that primarily upload videos to promote their own products or services but also (occasionally) post editorial content?¹⁴ What is a possible 'tipping point' for becoming (a provider of) an AVMS?

The criterion was prominently featured in a judgment by the Court of Justice of the European Union (CJEU) on February 21, 2018, in the "Peugeot Deutschland" case.¹⁵ In this case, the *Deutsche Umwelthilfe*, a German environmental organization, filed a complaint against an advertisement posted by Peugeot on its YouTube channel. Ultimately, the CJEU found that this type of AVMS must have the provision of programs for information, entertainment, or education as its primary purpose. According to the CJEU, this does not apply to the YouTube channel in question, as these videos solely promote a product or service for commercial purposes.

While the case provides a useful guideline, it may not work as well for channels where the purpose is not as clear. Additionally, there are no guidelines for the determination of the principal purpose of an audiovisual media service.¹⁶ Therefore, the NRAs must adopt a case-by-case approach. The interviews reveal that the ERGA-members take various factors into account when assessing whether a channel is primarily to inform, entertain, or educate the general public.¹⁷ Often, a general analysis of the channel is conducted, applying some quantitative and/or qualitative indicators. For example, it may be considered **what proportion of the videos** (possibly expressed in percentages) consists of videos that **are solely to promote a product or service for commercial purposes**. The **user experience** also plays an important role in the assessment. Is it clearly perceptible to the general public that a channel is exclusively to promote (its own) products or services? Consideration may also be given to the **nature and origin** of the (potential) vlogger. Several NRAs, for example, are more likely to exclude channels from companies from the obligations of the AVMS Directive.¹⁸

Lastly, some NRAs indicated it is important to bear in mind **the purpose** of the AVMS Directive. Vloggers were brought within the scope of the directive to protect (among other things) minors and to ensure a level playing field as much as possible. Is there a conflict with these principles and a risk when the commercial purpose of a channel (independently of the videos posted on the channel) is obvious and the audience is not likely to be misled about the commercial intentions?

In conclusion, when determining whether certain channels primarily inform, entertain, or educate the general public there will be a 'tipping point'. It can be challenging to determine this, especially because editorial content and advertisements often take similar forms. Based on a general analysis of the channel, applying qualitative

Preliminary findings:

- ➔ Determining the main purpose of an audiovisual media service poses practical challenges.
- ➔ Due to the lack of clear guidelines, NRAs must adopt a case-by-case approach, taking into account various factors, such as:
 - Whether the videos have an entertainment element;
 - the ratio of various types of videos;
 - the nature and origin of the vlogger;
 - the user experience, and;
 - the objective of the AVMS Directive.

¹² Directive (EU) 2010/13.

¹³ Report – Analysis and recommendations concerning the regulation of vloggers, <https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Vloggers.pdf> (2021), p. 20 – 21.

¹⁴ In addition, ERGA's second vloggers report (2022) already noted that 'promotional' videos are sometimes difficult to distinguish from videos containing only editorial content. Refer to Report – How to Identify and localise vloggers and regulate their commercial communication?, [2022-12-ERGA-SG1-Report-Vloggers-2.pdf \(erga-online.eu\)](https://erga-online.eu/2022-12-ERGA-SG1-Report-Vloggers-2.pdf) (2022), p. 33.

¹⁵ Judgment of the Court (Ninth Chamber) of 21 February 2018, Peugeot Deutschland GmbH v. Deutsche Umwelthilfe eV, Request for a preliminary ruling from the Bundesgerichtshof, Case C-132/17, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62017CJ0132>.

¹⁶ Such guidelines do for instance exist for the practical application of the essential functionality criterion of the definition of a 'video-sharing platform service' under the Audiovisual Media Services Directive (Communication from the Commission (2020 / C 223 / 02). Guidelines on the practical application of the essential functionality criterion of the definition of a 'video-sharing platform service' under the Audiovisual Media Services Directive).

¹⁷ Best practice by : KommAustria (Austria), VRM (Flanders/Belgium) , CSA (French speaking community/Belgium),)Medietilsynet (Norway) and CNMC (Spain).

¹⁸ Best practice by: KommAustria (Austria) and CNMC (Spain).

and/or quantitative indicators, it will have to be determined on a case-by-case basis whether a channel qualifies as an AVMS.

2.1.3. General public

While writing ERGA's first vloggers report, it became apparent that the 'general public' criterion poses several challenges to ERGA members in their daily practice. Various NRAs already pointed out in their answers to the survey for the first ERGA vloggers report that the supply of vloggers cannot or can hardly be excluded from the definition. Particularly in countries that opted for a registration obligation for vloggers and other on-demand services, the need for further interpretation and concretization of the criterion has manifested itself. As a result, small players in particular fall outside the definition and/or are exempt from a registration obligation in various countries.

To get an update on current practices, several NRAs were asked how they interpret and apply the criterion in practice and whether they use or consider introducing thresholds in that regard. A number of trends and similarities can be observed from the chosen approaches of Member States that can be qualified as interesting best practices and can serve as source of inspiration for other countries.

In the first report, the recommendations already suggested that when determining whether the content is aimed at the general public, various aspects should be taken into account and weighed against each other. For example, when three out of four indicators indicate the service is targeting the general audience it can be qualified as such. Recital 21 of the AVMS Directive states that the **provider's intention to reach the general public** can be a relevant circumstance when assessing the service. Various supervisors note that it is quite possible that, despite the intention and perhaps modest ambitions, a service can have a wide reach and therefore have a significant impact on the general public. The **chosen format** and **subject of the content** can also provide a clear indication of whether it is aimed at a general audience. It is often examined whether these formats have an equivalent in traditional media services. For example, "product reviews" can be interpreted as the equivalent of consumer shows, and "challenges" or "pranks" as an equivalent of entertainment shows.

This paves the way to a perspective upon which certain channels can, as per their subject matter, be excluded, even if theoretically (and based on qualitative criteria), they could fit into the definition of an OD AVMS. In a system of matrix, the other elements of the mass media criterion could be evaluated. Programmes must potentially interest the general public. Content aimed at a specific (niche) audience should be assessed according to their potential to attract other audiences (as those targeted). The French Arcom has ruled that a provider **targeting a category of audience** such as pension's home residents and staff, which corresponds to a group of individuals, falls within the scope of audiovisual communication when the message is **certainly aimed at a target audience**, but the content does not appear to be tailored to the specific characteristics of each pension's home resident or staff member.

In the interviews conducted for this report, many NRAs indicated that content aimed at public groups that are **small in size and easy to define** should be **excluded**. As an example, content aimed at IT specialists or other **professional groups** in **special channels** was mentioned. At the same time, various NRAs such as the Norwegian Medietilsynet emphasized that a case-to-case approach remains important. The Austrian KommAustria pointed out that the mere fact that certain content is only accessible with a PIN code or other access restrictions, such as a fee, can still mean that there is a focus on the general public. In France, Arcom checks whether the provider targets specific individualized persons exclusively or whether they are addressing a group of individuals unknown to them, constituting a public or a category of the public. In the latter situation the service would be assumed to aim at the general audience.

For example in Germany the fact that a provider focuses on a **small closed group** is **not a reason to exclude** it from the concept and scope of regulations, but it does not have to register. With such a system, regulators will often track down providers subject to regulation through complaints from the public and signals from the market.¹⁹ Contacts with professional interest groups such as MCNs (Multi Channel Networks) will also contribute to the visibility of relevant players.

While these indicators, mentioned above, can mainly be assessed *ex-ante*, the following indicators are particularly suitable for an *ex-post* application. From the responses to the questionnaire distributed for ERGA's first vloggers report, it could already be noted that several members used **threshold criteria** or were seriously

¹⁹ The same monitoring system applies within Arcom (France) whereas complaints come from the public and from the public protection associations too.

considering doing so. Two years later, it appears that for some NRAs use or consider to use thresholds related to the **number of views, followers and/or subscribers**.²⁰ Several NRAs have been successfully applying threshold criteria for several years. In countries such as Italy and Spain, NRAs are considering the introduction of threshold criteria when designing new policies (Italy) or it is still the subject of political decision-making (Spain)²¹. The Lithuanian NRA evaluates the number of subscribers of channels in each case separately and decides, whether it is significant enough to consider that it reaches the general public. It should be noted that the audience reach of vloggers can fluctuate greatly and that, given the large differences in the size of markets and population numbers between EU countries, uniform audience reach thresholds would not be feasible and helpful.

In the New Media Online case the CJEU²², made a reference in regard of a level playing field between television and on-demand services, as well as the **impact on public opinion**, to justify the classification of short videos as programmes and include them into the scope of regulation.

While the previous characteristic is mainly a **quantitative approach** to measuring the impact of a vlogger's offer, several ERGA members indicated that they also value a **qualitative interpretation**. In accordance with this approach, it should be assessed whether certain content has a certain impact on society and/or public opinion. This will depend not only on the audience reach but also on the **content** and the **reactions it evokes**. At the same time, to put things into perspective, it should be noted that such a (qualitative) impact will not be easy to determine. In addition, NRAs generally want to refrain from substantive assessment of content or, given their legal mandate, are not even entitled to do so.

Preliminary findings:

- ➔ For the notion of general audience various aspects can be taken into account and weighed against each other in a matrix model.
- ➔ Some relevant indicators can be better evaluated *ex ante*, such as:
 - the intention of the service provider;
 - the format and subject, and;
 - the target group of the service.
- ➔ Some relevant indicators can be better evaluated *ex post*, such as:
 - audience reach, and;
 - impact of the content.
- ➔ As far as audience reach criteria are concerned, several NRAs are using or considering to introduce thresholds such as the number of viewers or subscribers.

2.2. Assessing commercial communications in practice

Article 9.1 (a) of the AVMS Directive states: “audiovisual commercial communications shall be readily recognizable as such; surreptitious audiovisual commercial communication shall be prohibited”. The directive distinguishes between different forms of commercial communication. These are subject to different transparency obligations so that they can be easily recognized as such. According to the directive we can identify the following main categories of commercial communication:

- Advertising
- Sponsoring
- Product placement

²⁰ Best practice by: Medietilsynet (Norway), CvdM (Netherlands), AGCOM (Italy).

²¹ In this sense, the Ministry of Digital Transformation has recently launched a hearing and Public Information on the draft Royal Decree regulating the requirements to be considered a user of special relevance (UER) for the purposes of the provisions of Law 13/2022, of 7 July, General Audiovisual Communication (hereinafter, DRD). This DRD develops how to analyse the “economic purpose”, “general public” and “significant audience” criteria by setting different thresholds. Regarding the “economic criterion” the DRD sets a threshold that requires UER to accrue revenues in the previous financial year equal to or exceeding EUR 500,000, derived from their activity on the VSP. Regarding the “audience criterion” the DRD establishes that this criterion is fulfilled when UER have an annual average more than 2.000.000 followers on at least in one of their services and posted at least 24 videos during the previous year. This public consultation will be opened until December 20, 2023. The public consultation can be seen, in Spanish, here: <https://portal.mineco.gob.es/es-es/ministerio/participacionpublica/audienciapublica/Paginas/Audiencia-informacion-publica-proyecto-RD-regulan-requisitos-considerado-usuario-especial-relevancia.aspx>

²² EU Court of Justice, 21 October 2015, C-347/14: “Recital 21 – [...] like a television broadcast programme, the videos at issue in the main proceedings are aimed at a mass audience and are likely to have a clear impact on that audience within the meaning of recital 21 in the preamble to Directive 2010/13.”

- Self-promotion²³

All NRAs that were interviewed for this report, recognize the importance of assessing commercial communications. However, since the directive only gives a few indications as to how these forms of advertising must be specifically labelled, the way NRAs assess this transparency obligation differs. For instance, in Lithuania and Germany²⁴ vloggers are supposed to display the letter P in the video when it contains product placement, whereas in the Netherlands vloggers should mention that the video contains product placement in the beginning and the end of the video.

NRAs experience that vloggers find it difficult to distinguish between the different options, especially when it comes to distinguishing sponsoring and product placement. This may be partly due to the fact that the distinction between these types of commercial communication was originally created for linear television. Some NRAs take a very **practical approach** in solving this issue. For example, in Norway the NRA distinguishes between advertising, sponsoring and product placement. When in doubt whether it is advertising or product placement, the Medietilsynet recommends vloggers to label the content as advertising, just to be "on the safe side".

Sometimes, specifications on the labelling of advertisements are already stated in the contracts with advertising partners. However, these specifications do not necessarily correspond to the legal requirements and expectations of the NRA. For example, in the Netherlands there was a case where a vlogger used the term "partner", which is not clear enough according to the Dutch Media Act. When asked, the vlogger mentioned that it was part of the legal contract with the brand. It was specifically required in the contract to use the term "partner" in the video.

Another issue with this distinction is that it is very challenging for NRAs to recognize which type of commercial communication takes place in the videos of vloggers. A reason for this might be that monitoring this kind of content is still relatively new. Whereas it might be commonly known for regulators how linear television shows make use of brands in their storyline (product placement), vloggers might have a different approach. The VRM mentioned that they have two **staff members** who are very **familiar with social media** and experienced indifferent types of influencer marketing techniques such as endorsements, barter (PR-packages and PR-events), affiliate links etc.. Therefore it's easier to know if certain kind of video content contains commercial communication. Differentiating between the classical types of commercial communication that were originally created for linear television (sponsorship – product placement) appears to be more challenging.

Several NRAs that were interviewed seem to question the relevance of the distinction between advertising, sponsoring and product placement in regulating vloggers' content. Since the terminology is coming from legislation aimed towards linear television, it is worth noting that this distinction might not be necessary to achieve transparency about commercial communication in the content of vloggers. In the Netherlands, the focus during conversations with vloggers lies on the "**bottom line**", **the importance of informing viewers** about commercial intentions. The distinction between, for example, advertising and sponsoring does not have to be completely aligned with the distinction made for television formats, as long as vloggers are transparent about their commercial communication in **a clear terminology**.

This line of thought was also an important recommendation in the recent BEUC report on vlogger regulation.²⁵ It was stated that it is indispensable that a clear and unique term, namely "advertisement" is used to increase transparency. From a consumer point of view, the type of contract or remuneration between influencers and brands is irrelevant and should not lead to a different formulation.

Nevertheless, one difficulty with following this line of thought, is the fact that the distinction between advertising, sponsoring and product placement is not without consequences since the rules differ per category. Some forms of commercial communication might be subject to stricter regimes. For example, product placement is not allowed in content targeting minors (see the following paragraph). One solution might be the Norwegian approach, where Medietilsynet has the experience that vloggers usually have either **advertising** or **product placement**, and not sponsoring in their content. The NRA recommends to use the label 'advertising' when it is clear marketing for the product and it should be labelled as product placement

²³ See page 30 and further of [ERGA Vloggers report of 2022](#) for more in-depth information on these types of commercial communication.

²⁴ In Germany vloggers should use the term "supported by product placement", which can be reduced to the letter P, when an video contains product placement.

²⁵ From Influence to Responsibility - Time to regulate influencer marketing [BEUC-X-2023-093 From influence to responsibility Time to regulate influencer-marketing.pdf](#)

when the product is not the main focus of the video and the video consists mostly of other content. This distinction might lead to more clarity for both the vlogger as well as the NRA who is monitoring the content.

Another practice worth considering is discussing the distinctions and possible improvements with the **sector**, as Arcom did in France. The French NRA suggests to distinguish three different types of commercial content that might be **more suitable for the online world**: advertising, sponsored content and partnered user content.

Format of labelling commercial communications

Other challenges that members experience are linked to the format of the commercial communication. Disclosures should be clear and legible, and visible for consumers. In Belgium the CSA requested vloggers to use the identification tool provided by the platforms and to add any complementary vocal or graphic information in order to make the identification as clear as possible. This complementary information is often needed when multiple products appear on the screen, to precisely identify those that have been commercially promoted. Since this additional information didn't show up long enough or very blurry, it obviously didn't provide enough clarity. Therefore the CSA suggested to vloggers to **vocalize** the information about commercial intentions. The vlogger can choose themselves how, as they know what is most applicable for them and their audience, according to CSA. The Lithuanian NRA notes that information about commercial communications can be also provided in the field for description of video content. However, this is considered not sufficient by itself and RTK requests vloggers to also vocalize this or provide this information in a written form.

Self-promotion

As was already mentioned in the second ERGA report, influencers can also choose to promote their own products and/or branded products (also known as merchandise). Some NRAs mention that it is not always easy to recognize whether a vlogger is promoting their own products. Many NRAs consider self-promotion a form of advertising.

Self-regulatory bodies

As far as the regulation of commercial communication is concerned it is important to note that in many countries self-regulatory organizations have developed rules and guidance specifically aimed at vloggers, social influencers and comparable actors. Often, these are codes of conduct dealing with the content of advertising. It is important to keep track of those regimes and ensure there are no duplications or gaps between these self-regulatory mechanisms and the statutory regulation stemming from the AVMS Directive overseen by NRAs. As indicated in ERGA's last vloggers report, it is a joint responsibility of NRAs and self-regulatory organizations such as the advertising standards associations active in most countries to achieve a coherent and integral approach and avoid regulatory fragmentation. They can also play an active role in making the vloggers and other related players such as MCNs aware of all the rules in place. When vloggers are **better aware** of all **their (legal) responsibilities** they can be more **trustworthy business partners for advertisers and brands**. In this respect it is worth mentioning that in France a **certification regime** was introduced by the *Autorité de Régulation Professionnelle de la Publicité* (ARPP), a non-governmental body in charge of enacting and enforcing ethic advertising rules among advertising actors in France. Vloggers who follow certain trainings with success, will receive a so called Responsible Influence Certificate²⁶ that can increase their credibility.

The importance of consumer research

ERGA's second vloggers report already addressed the added value of consumer research. For instance, panels composed of consumers including youngsters who watch vloggers material can provide insight in how the audience perceives the information, where it sees the main risks and what it regards as harmful content. Without doubt, this can help to better understand the effects of labelling and provide relevant feedback for evidence-based supervision and enforcement policies of NRAs.

²⁶ [Influence responsable - ARPP](#)

Preliminary findings:

- ➔ Several NRAs experience difficulties with assessing different commercial communications, as these rules are initially created for linear AVMS.
- ➔ However, through the experience gained we can already see different approaches, such as;
 - A practical approach, where commercial communication is mainly labelled as advertising (only distinguishing between advertising and product placement);
 - Expert staff members who merely focus on vloggers content, also to recognize different inventive and rapidly changing influencer marketing techniques as commercial communication;
 - Involve the sector to come up with new definitions of commercial communication which are more fitting to the online world;
 - Consider different forms of labelling: such as vocal announcements;
 - Trainings and certification regimes for vloggers to raise awareness of their responsibility (and make them more attractive for brands).
- ➔ Rules based on statutory regulation and self-regulation should be complementary.
- ➔ NRAs and self-regulatory organisations have a joint responsibility to observe this and to raise awareness of all applicable rules.

2.2.1. Targeting minors

As already mentioned in ERGA's second vloggers report (2022) and by NRAs during the interviews; many vloggers and users do not see the relevance of the distinctions made between advertising, sponsoring and product placement. However, in case of commercial content targeting minors the subtle difference between the different types of commercial communication can have big consequences. For instance, when the commercial communication qualifies as sponsoring, in many Member States it is not allowed to target minors (article 10.4 of the AVMS Directive). As mentioned before, when the commercial communication is qualified as product placement and targeted towards children, it is not allowed in any of the Member States (article 11.2 and recital. 34 of the AVMS Directive).²⁷

In the study *The impact of influencers on advertising and consumer protection in the Single Market*²⁸, which was requested by the IMCO committee of the European Parliament, four main features of influencer marketing were identified. The first three do not specifically distinguish them from traditional commercial AVMS: 1) content creation, 2) commercial intent and 3) monetization. However, the fourth feature, 'trust and authenticity' of the content does distinguish influencers from traditional (commercial) AVMS. This is related to the source of influence which is based on a one-sided relationship (parasocial) where a media user becomes attached to and invested in a social media character. Therefore the content is more relatable and perceived as more authentic by the audience.²⁹ The same study emphasizes how the trust and authenticity features of vloggers makes young consumers in particular prone to influencer marketing.³⁰ Unfortunately, the impact of influencer marketing on children is still not fully researched. However, a study by De Veirman et. al. shows us that children generally have low advertising literacy skills. This possibly means they are easier influenced by this type of marketing. Also, their trust in peers is higher compared to adults and they perceive content of influencers often as authentic.³¹ The study also mentions the way influencers marketing strategies are generally adapted to specific groups, so also to children. For instance, some influencers allow commercial

²⁷ ERGA SG1 – Consistent implementation and enforcement of the new AVMSD framework: Report – [How to identify and localise vloggers and regulate their commercial communication?](#) (2022), p. 33-34.

²⁸ Study requested by the IMCO committee (the European Parliament's Committee on Internal Market and Consumer Protection) "[The impact of influencers on advertising and consumer protection in the Single Market](#)", February 2022.

²⁹ Study requested by the IMCO committee (the European Parliament's Committee on Internal Market and Consumer Protection) "[The impact of influencers on advertising and consumer protection in the Single Market](#)", February 2022, p. 9.

³⁰ Ibid., p. 49.

³¹ De Veirman, M., Hudders, L., & Nelson, M. R., 2019, *What is influencer marketing and how does it target children? A review and direction for future research*, *Frontiers in psychology*, 10, 2685.

parties to participate in their content which is often very appealing to children as they share their personal experiences and stories.³²

To sum up, **children** (including teenagers) **are easily influenced**, as far as research can tell us, and are **big social media users** with generally **low advertising literacy skills**. Therefore, NRAs have an enhanced responsibility to protect this vulnerable group against the negative effects of influencer marketing.³³

The importance of protecting minors against commercial influence is undisputed and, under Article 11.2 of the AVMS Directive, programs aimed at minors may not even contain product placement. However, determining whether content is targeted minors can be challenging in practice. Therefore we asked NRAs *how* they determine whether commercial communication is specifically targeting minors, since this is not always as clear as one would expect. The definition of 'targeting' as such can even be questioned in this light. Most content is not specifically children's content, but does have characteristics that make it attractive to children. An interesting follow-up question that arose during the interviews with NRAs was: when assessing borderline cases, do NRAs feel more comfortable with abstract frameworks (i.e. guidelines, objective criteria) or do they prefer a case-by-case approach? Most NRAs answered this question with the latter: a case-by-case approach is in these cases most effective because of the context-dependent nature of these cases. However, some criteria have been identified in the first years of practical experience that are remarkably similar among the responding NRAs. The criteria NRAs³⁴ take into account are:

- 1) Are the **products** in the commercial communications of particular interest to children?
- 2) Are the **topics** in the commercial communications of particular interest to children?
- 3) Are **children or teenagers involved** as a participant in the commercial communications?
- 4) Are there particular **elements** in the commercial communication/presentation of the video that appeals to children, such as:
 - a. Animation
 - b. Childlike music and/or sounds
 - c. Use of language (childlike vocabulary, high voice, etc.)
 - d. Use of symbols, font of text.

As mentioned above, most NRAs do not have guidelines on the determination of commercial communications and choose a case-by-case assessment. Nevertheless, very similar criteria can already be identified based on experience and some criteria do give guidance in the assessment. Since the protection of minors is a priority in their supervision for many NRAs, most supervisors will lean towards the highest level of protection in borderline cases.

Preliminary findings:

- ➔ Children (including teenagers) are easily influenced and are big social media users with generally low advertising literacy skills.
- ➔ Most NRAs with experience in this field have a case-by-case approach.
- ➔ However, through the experience gained we can already see overlapping criteria to determine whether a vlogger is targeting minors, such as:
 - the products are of particular interest to children;
 - the topics are of particular interest to children;
 - there are children or teenagers involved as a participant;
 - there are particular elements that appeals to children, such as: animation, childlike music and/or sounds, use of language, use of symbols, font of text.

2.3. Monitoring and enforcement strategies

Creating and executing monitoring and enforcement strategies can be vital for effective supervision and enforcement. Online monitoring of vloggers and the content they provide on platforms can be done in various

³² Example: Österreichisches Institut für angewandte Telekommunikation, 2018, Kinder im Visier von Influencer-Marketing. Auf YouTube, Instagram und Snapchat. Available at:

https://www.saferinternet.at/fileadmin/redakteure/Footer/Studien/Kinder_im_Visier_von_Influencermarketing.pdf.

³³ Read more about the negative impact of influencer marketing on children: Study requested by the IMCO committee (the European Parliament's Committee on Internal Market and Consumer Protection) "[The impact of influencers on advertising and consumer protection in the Single Market](#)", EASA, February 2022, p. 50.

³⁴Best practice by: VRM (Flanders/Belgium), Medietilsynet (Norway), Medienanstalt-NRW (Germany), CvdM (Netherlands).

ways, depending on the **techniques used**, the **legal mandate** and, **human and financial resources** of the NRA. During the interviews we asked NRAs whether they have a monitoring and enforcement strategy in place regarding vloggers. As NRAs are at different implementation levels, not all of them have such a strategy in place yet.

Furthermore, as vloggers are a very different group to the more traditional AVMS under supervision, it might be a learning process in practice. Therefore, NRAs recognize the need to be **flexible** in creating these strategies, also because of the **fast paced environment**. For example, the Spanish CNMC mentioned that if vloggers move to different platforms, supervision should be flexible enough to move along with them.

The NRAs in Germany and Belgium have quite some experience with **proactive monitoring**. They regularly check profiles or channels under their supervision. As mentioned before, the VRM has two employees (**social media watchers**) who monitor accounts. Although many NRAs recognize the potential of using **AI tools**, most of them **still monitor manually**. The CNMC in Spain issued two routes when it comes to monitoring vloggers, supervision of commercial communications and age rating of the content. After reviewing more than 2.000 hours of content with its own staff since 2019, in 2023 the CNMC started to work with a consultancy to monitor up to 500 hours of videos per year. They also started to explore AI monitoring tools. While looking at already available tools, they also started to **develop their own tool**, which is a long-term project. It is challenging to find a tool with the capability to filter out every breach of the law. The French NRA, Arcom, also started a reflection concerning AI monitoring tools including an internal analysis and a sectoral analysis aiming to provide a clearer understanding of the challenges faced by AI practices in the area of audiovisual and digital communication³⁵.

Prioritizing (possible) **violations** is an important aspect of the monitoring strategy. Most NRAs seem to prioritize accounts with **more followers** over vloggers with a smaller follower base. This prioritization is based on the idea that vloggers with the most followers comprise **the highest risk** and **significance**. However, the possible impact and engagement of **micro influencers** is also noticed by some NRAs. Even though these vloggers have fewer followers, they can still have a big impact on their audience and might even have more engagement than “bigger” vloggers. Once again, this shows the importance of NRAs being flexible in the monitoring and engagement strategies regarding vloggers.

Until now, most NRAs that have started active supervision, have not used formal enforcement measures yet to make vloggers comply. This means that NRAs offer individual guidance, issue and distribute guidelines, and give presentations at different stakeholder events (see next paragraph about ‘communication strategies’). Some NRAs have **issued warnings**, such as the CSA in Belgium. According to the CSA, no official sanctions have been necessary yet, because their case-by-case approach seems to work. The CSA monitors a smaller number of representative channels for a few months and go from there. Their strategy is not based on consumer complaints. The Lithuanian NRA has also issued some warnings for vloggers, who refused to comply with registration obligation and even had court proceedings regarding this as one of the vloggers contested the warning at the court. After the appeal, the decision adopted by Vilnius Regional Court was in favour of the RTK and the vlogger was requested to comply with the obligations.

Some other NRAs attach greater **importance** to the **role of consumers** in monitoring. For example, the German colleagues mentioned that **consumer complaints always have priority**, no matter how many followers the specific vlogger has. Some NRAs focus on **specific topics**, such as content involving alcohol or pharmaceutical products. NRAs that use this kind of strategy often make use of **signals** and **complaints** from the public to decide which topics to focus on.

³⁵ Press release September 22, 2023: <https://www.arcom.fr/presse/larcom-lance-une-mission-consacree-aux-usages-de-lintelligence-artificielle-dans-le-domaine-de-la-communication-audiovisuelle-et-numerique>.

Another important stakeholder for NRAs to include in their strategy is the **influencer agency** or **influencer manager**. The German NRA stated that their experts look into influencers agencies and sometimes even find “new” vloggers this way. Furthermore, these stakeholders can potentially be a stepping stone in reaching the vloggers under supervision. Even though these agencies are not considered providers of AVMS, they do play an important role in contracting brands to promote and sometimes even create or check the content of vloggers. Therefore, it is also in their advantage that vloggers who are part of their portfolio comply with the rules and regulations on, among others, commercial communication. More information about getting to know this field can be found in the part about communication strategies.

Preliminary findings:

- ➔ Even though creating a monitoring and enforcement strategy is vital for effective supervision, the vlogger field of supervision requires NRAs to be more flexible in adapting their strategies.
- ➔ Most of the NRAs monitor manually, but attach great importance to the possibility of using AI tools for this in the future.
- ➔ Prioritization in monitoring and enforcement is based on different factors among NRAs, such as:
 - Specific vloggers with high reach;
 - Specific content/topics that poses a big risk to audiences (based on signals from audiences);
 - Signals from consumers (complaints);
 - Specific micro influencers, due to their authentic relationship with the audience.
- ➔ Most NRAs have not issued any fines. Warnings are often sufficiently effective.
- ➔ It is crucial to include important stakeholders in the strategy, even if they do not fall under supervision, such as influencer agencies.

2.4. Communication strategies

All NRAs have a common objective when it comes to vloggers regulation and supervision: vloggers should comply with the AVMS Directive rules so audiences experience the same level of protection in the online sphere as they are protected while using more traditional AVMS. This is a balancing act for NRAs. On the one hand, relatively small and new players should not be overly burdened. On the other hand, vloggers tend to have a wide reach and tend to have an intimate relationship with their audiences.³⁶ Therefore we should not underestimate the impact they have on often vulnerable groups, such as minors.

As highlighted by the IMCO study mentioned above, the sector is still growing and every year more people become influencers. This group is relatively young and not necessarily experienced with marketing practices. Therefore some (especially new) vloggers may find it difficult to understand and apply the relevant regulations.³⁷ This poses new challenges for NRAs in terms of communicating with vloggers as professional regulated parties, but also discussing how to properly inform their audiences.³⁸ There is, naturally, no guidance in the AVMS Directive or in national legislation about communication strategies. Yet, this is a crucial part of supervision that can contribute to compliance with the rules. However, there is much to be learned from the practical experience of other NRAs.

We asked NRAs during the interviews about their experiences regarding their contact and communication with vloggers as a relatively new group under their supervision. The NRAs we spoke to during the interviews can be divided into two groups: 1) NRAs with good experiences in communicating and making contact with the vloggers under their supervision, and 2) NRAs who have more difficulties in contacting this group and/or establishing a good but professional relationship. However, a correlation can be seen between good contact with vloggers and their compliance with the rules. There is also a correlation between compliance and the level of professionalism and experience. The “bigger” and more experienced vloggers are often supported by agencies or managers who have more expertise on regulation and compliance issues. Most NRAs indicate

³⁶ See p. 10 of this report about the parasocial relationship between influencers and their audiences.

³⁷ Study requested by the IMCO committee (the European Parliament’s Committee on Internal Market and Consumer Protection) “[The impact of influencers on advertising and consumer protection in the Single Market](#)”, EASA, February 2022, p. 96.

³⁸ Ibid., p. 95: This is also one of the main recommendations in this study ‘Providing information and guidance can help influencers and consumers’.

that their contact with these agencies is usually successful as their informal warnings and/or requests are being answered. However, this relates more to the maturity of the industry, which is an external factor that is out of your control as an NRA. What are effective approaches can NRAs implement?

Bearing in mind that not all NRAs have the same capacity in terms of human and financial resources; we have created a three-step approach to the level of communication and contact you can implement, with recommendations for efficiency and impact.

<p>1. Basics: clear and accessible information</p>	<p>An <u>approachable</u> website and <u>clear</u> information:</p> <ul style="list-style-type: none"> → Clear and easy accessible guidelines → A digital tool to register³⁹ → Information explained in videos (i.e. other forms of visualization)
<p>2. Next step: getting to know the field</p>	<p><u>Multilateral</u> contact with vloggers:</p> <ul style="list-style-type: none"> → Organizing (yearly) events: workshops, explaining applicable regulation⁴⁰ and sharing supervision priorities for the upcoming year → Attending vloggers events, conferences and seminars organized by other parties: giving presentations/workshops → Awareness campaigns on AVMS rules and role of the NRA → Conducting surveys among vloggers about applicable rules and compliance <p><u>Bilateral</u> contact with vloggers:</p> <ul style="list-style-type: none"> → Appointed experts within the NRA who mainly focus on vloggers ('Social media watchers'⁴¹) → Account coordination for the biggest vloggers
<p>3. Level playing field: shared responsibilities</p>	<p><u>Multilateral</u> contact with vloggers (and the rest of the industry):</p> <ul style="list-style-type: none"> → Involving vloggers in the organization of events, revision of guidelines, informing their audiences → Inviting the rest of the industry: agencies, platforms, brands and intermediaries

It goes without saying that these steps do not have to be taken in chronological order. A common philosophy among experienced NRAs is to start simple and build up, instead of trying to overstretch themselves from the outset.

The first recommended step in the communication strategy starts with clear guidelines for the field to be able to assess whether they fall under the regulation or not, and if so: what type of rules they should comply with. This sounds straightforward but also in terms of legal certainty this is a crucial first step. As mentioned earlier, the group of vloggers is often young and, especially in the beginning, are not supported by a legal team or advisors. Therefore it could be worthwhile to adapt the form of communication bearing this in mind: a clear and approachable website, visualization⁴² of rules and steps to be taken and, in case of a registration obligation, making registration as easy as possible, for example by implementing a digital tool to register⁴³.

The second recommended step is to get to know the field. This can be even more challenging for NRAs who do not have a registration obligation in place due to their lack of contact details. We have seen two different

³⁹ In case there is a registration obligation.

⁴⁰ Best practice by: VRM (Belgium/Flanders), CSA (Belgium/French community), Medietilsynet (Norway), Medienanstalt-NRW (Germany).

⁴¹ Best practice by: VRM (Belgium/Flanders).

⁴² Best practice by: Medienanstalt-NRW (Germany), VRM (Belgium/Flanders).

⁴³ Best practice by: CvdM (Netherlands): [Login - CvdM Formulieren](#)

levels to get in touch with vloggers which can be deployed simultaneously: on a multilateral level and bilateral level. One of the leading best practices of the **multilateral** level is organizing events for the sector. Some NRAs show us their experiences with positive results. Organizing a 'vloggers event' seems to be an efficient way to convey a message directly to the whole field and provide information about regulation, enforcement, the role of the regulator, etc. It is also a good way to get to know the vloggers and create a personal relationship in order to get in touch easier whenever needed in the future. In order to attract vloggers to the events it is recommended to have good press coverage and make it a networking event for them.⁴⁴ For smaller NRAs this can also be an effective tool because of the relatively big reach and impact if account coordination or bilateral contact is not possible. The organization of a vloggers event can also be done in cooperation with other organizations or self-regulatory bodies. Contact can also be effective on a **bilateral** level. The VRM has good experiences with their so called 'social media watchers'. These two appointed experts merely focus on the vloggers. In this way a lot of expertise about the sector is gained, and is concentrated within the authority, as these two experts can focus and work closely on the vloggers. It also makes the NRA more approachable to the field because it is clear who to contact. Another, less time-consuming option, is to appoint account coordinators within an NRA for only the largest vloggers.

Experienced NRAs added another step in their communications approach, which consists of creating a feeling of shared responsibility with vloggers but also with other players within the eco-system, such as brands, platforms and other intermediaries. This also goes hand in hand with the maturity of the sector. Some NRAs organize workshops together with platforms, such as Meta and Google. On these events the platforms often explain new tools vloggers can use while the NRA provides information about regulation.⁴⁵ On the yearly events, NRAs also create more opportunities to gain input from vloggers. Especially the bigger vloggers are aware of their responsibilities and can set an example for the rest of the sector, for example by giving presentations on these events. Brands can also play a role in raising awareness about professionalism and brands not wanting to be associated with unethical practices or breaches of the law. The events are also organized around topics to assist vloggers in their work and that are of interest for them. More experienced NRAs bear an additional responsibility to help vloggers with the challenges they face. For example, the CSA will organize a vloggers event about freedom of speech⁴⁶ and cyber harassment. During this event they will share tools to prevent harassment and ways to prove it. This also contributes to trust and therefore a good relationship between vloggers and NRAs which all contributes to our common goal: a better and safer internet.

Preliminary findings:

- ➔ Good contact with vloggers can contribute to their compliance with the rules.
- ➔ It is recommended to start with a simple communications strategy and build up, instead of trying to overstretch from the start: first focus should be clear and approachable guidelines.
- ➔ There are good and effective communication strategies without needing much capacity in terms of human and financial resources.
- ➔ The responsibility for well protected audiences lies with the whole industry and therefore the whole eco-system around vloggers: communications should also be targeted towards platforms, brands and intermediaries.

3. Conclusions

After assessing practical experiences of NRAs with regulating, supervising and in some cases even enforcing their national media laws on vloggers, it can be concluded that since ERGA's first vloggers report more NRAs have started to supervise vloggers. Many of them have developed guidelines to provide more clarity and legal certainty to vloggers, other market parties, and the audiences. NRAs employ diverse approaches in evaluating vloggers' content as (on-demand) audiovisual media services according to the AVMS Directive. We observed that NRAs work with the same requirements, which are derived from the AVMS Directive. However, there are variations in how these requirements are implemented. This reveals multiple approaches to determining whether a vlogger: 1) provides an economic service, 2) has the principal purpose of informing, entertaining, and educating the general public, and 3) targets the general public. In this report, we highlighted the differences and best practices, which NRAs can use to shape their own regulatory oversight (more

⁴⁴ Best practice by CSA (Belgium/French community), VRM (Belgium/Flanders), Medienanstalt-NRW (Germany).

⁴⁵ Germany (Meta) and Netherlands (Google).

⁴⁶ Answering questions such as 'why are my videos on platforms erased?' and focusing on the different regulation in the U.S.

effectively). The interviews indicated that the current AVMS definition criteria are considered to be sufficient and there is no need for a *lex specialis* of vloggers.

Additionally, all the NRAs we interviewed endorsed the importance of making clear how the different types of commercial communication should be interpreted. It goes without saying that vloggers need to ensure optimal transparency about commercial interests. The distinctions between the different types of commercial communication stated in the AVMS Directive might be subtle but have great impact in practice, especially in regards to the prohibition of product placement in audiovisual media content aiming at minors. Many NRAs involve different players such as brands, influencer agencies (MCNs) and advertising standards associations when reaching out to vloggers. Various NRAs shared their monitoring and enforcement strategies, and we observed different approaches to those communication strategies. Meanwhile, many NRAs have started to involve different players such as brands, influencer agencies (MCNs), advertising standards associations and platforms when reaching out to vloggers. Several NRAs stressed in the interviews the importance of aligning the communication strategy to the specific needs and expectations of vloggers and their young audiences, for instance by organizing social events.

4. Recommendations

On the definition criteria

- When it comes to the criterion of economic service three main indicators can be considered: registration with Chamber of Commerce or tax services, financial thresholds and any form of economic activity.
- For determining the principal purpose criterion, it is often straightforward to determine whether a channel on a video sharing platform is for the purpose of informing, entertaining, or educating the general public. However, it can become challenging when the channel features videos with both a purely promotional purpose and videos that contain an entertainment element. In that case, several indicators can be taken into account, such as the proportion of promotion and other videos, the nature and origin of the vlogger, and the user experience.
- For assessing whether a vlogger offers a service targeting the general audience there are quantitative indicators such as audience thresholds and qualitative indicators such as the impact on public opinion. Furthermore, the format of the videos, the circle of persons that can have access to the content and the intention of vlogger can be taken into account. Based on a case-by-case approach the different indicators can be weighed against each other.
- When applying thresholds, be it for the criterion of economic service or the criterion general public, it is necessary to have regard of the national market characteristics since revenues and audiences can differ a lot per national market.
- Guidelines should elaborate how the different criteria of the definition of AVMS can be understood and applied in the situation of vloggers.

On assessing commercial communication

- Guidelines should also explain the differences between the various types of commercial communication and their consequences (i.e. product placement and minors).
- A practical approach could be considered for the online world, such as: only distinguishing between advertising and product placement.
- Different forms of labelling can also be considered, such as vocal announcements.
- Involve the sector to come up with new definitions of commercial communication which are more fitting to the online world.

On enforcement, monitoring and communications strategies

- Install expert staff members who solely focus on vloggers content. This could be useful for both communication purposes and monitoring purposes.

- Install trainings and certification regimes for vloggers to raise awareness of their responsibility (and make them more attractive for brands to cooperate with).
- NRAs and self-regulatory organisations, also depending on their resources, have a joint responsibility to observe and raise awareness of all applicable rules. Therefore, rules based on statutory regulation and self-regulation should be complementary.
- Be flexible in adapting guidelines and strategies in the vloggers field, as the sector changes rapidly.
- It is crucial to include important stakeholders in the strategy, even if they do not fall under supervision, such as influencer agencies and advertising standards associations to ensure consistent supervision and enforcement.
- Consider AI tools to achieve more effective and less time-consuming monitoring methods and enforcement procedures.
- Use consumer research in order to identify the potential harms for and expectations of users, which will contribute to evidence-based supervision.
- Approach vloggers in a common language and by creating or attending appealing social events.
- Start with a simple communications strategy and build up, instead of trying to overstretch from the start.
- Be inclusive and include the whole eco-system in your communication strategy: vloggers, but also influencer agencies (MCNs), brands, platforms, and other intermediaries.

Annex I – topic list interviews NRAs

Experiences with the “vlogger” definition (criteria)

1. What are the relevant elements that can or need to be considered when applying/interpreting the following criteria of the definition of audiovisual media service and/or media service provider as laid down in the AVMS Directive?
 - a) An **economic service** in accordance with articles 56 and 57 of the TFEU. For instance: do you or do you intend to apply a financial minimum turnover (threshold)?
 - b) The **principal purpose** to provide programmes which **inform, entertain or educate**. For instance: do you exempt or intend to exempt certain providers (such as cultural organizations) or certain content (such as pure advertising)?
 - c) The **editorial responsibility** for the selection of the programmes and their organization. For instance: what is or would your approach when the responsibility is shared by more providers?
 - d) A **catalogue of programmes** selected by the media service provider. For instance: can an offer consisting of both on-demand and linear audiovisual content still qualify as a catalogue? And what would be your approach if the offer also includes audio services?
 - e) The service is aimed at the **general public**. For instance: do or would you exclude services for certain small audiences/closed groups?
 - f) The service is delivered via an **electronic communications network** in the meaning of Article 2 of Directive 2002/21/EC. For instance: which transmission techniques would not be covered in your opinion?
2. The European Court of Justice's judgment on the case “Peugeot Deutschland” of 21 February 2018 pointed out that a channel with purely promotional videos could not be considered as an audiovisual media service. In that regard how would you deal with the situation where a company mostly posts content on their social media accounts that can be considered as mere advertising, but also occasionally posts editorial content? Do you have any thoughts on where is the tipping point of becoming (a provider of) an audiovisual media service?
3. Do you feel the need to adjust certain criteria in the definition of audiovisual media service and/or media service provider as set out in the AVMS Directive when it comes to vloggers?

Experiences with commercial influencing

4. What are your experiences with regard to the legal provisions concerning vloggers?

For instance (but not limited to):

 - a) How do you determine whether commercial communication is self-promotion?
 - b) How do you determine whether commercial communication is product placement?
 - c) How do you determine whether commercial communication is specifically targeting minors?
 - d) Do you experience any issues with the distinction between sponsoring, product placement and advertising?

Experiences with monitoring and enforcement of vloggers

5. Do you use specific (digital) tools to identify vloggers and localize their actual place of establishment?
6. Do you have all (legal) instruments at your disposal to retrieve all the information deemed necessary for your supervision and enforcement policies?
7. Do you have a monitoring strategy? If so, could you elaborate on what this strategy consists of? For instance: how do you deal with the situation that a video and/or video description does not contain any information about a commercial relationship, but a brand is clearly used or mentioned in the video? How do you determine the distinction between sponsoring, product placement and advertising?
8. Do you have an enforcement strategy and if so, could you elaborate on this?
9. Do you have any experience with the enforcement of vlogger and if so, could you elaborate on the experience/process? For instance: how do you determine when to start an investigation?
10. What are your experiences regarding your contact/communication/outreach with/to vloggers as a new group under your supervision?