



Middle Tech Europe (MTE) Submission Call for Evidence on the AVMSD Review

Middle Tech Europe (MTE) is a growing alliance whose members currently comprise Automattic, Dailymotion, Discord, Dropbox, Patreon, Pinterest, Reddit, WeWard, Yahoo, and Yubo, representing the critical "middle voice" in EU technology policy discussions. Our members operate a wide variety of services ranging from video-sharing and e-commerce to e-mail, forums, communication, media, and hosting services.

Introduction

Middle Tech Europe (MTE) welcomes the opportunity to contribute to this evaluation of the Audiovisual Media Services Directive (AVMSD) and assess its "internal and external coherence" with the broader EU regulatory framework. As acknowledged in the Call for Evidence, the digital regulatory landscape has "evolved significantly" since 2018, particularly with the adoption of the Digital Services Act (DSA).

We strongly support the Commission's objective to "simplify or streamline AVMSD rules" to ensure they remain "fit for purpose". And while we understand that this review is part of a statutory schedule, we also present our feedback in the context of the Commission's simplification and competitiveness agenda. MTE supports the Commission in this critical endeavour and we have contributed to the feedback process for the Digital Omnibus proposals. We agree with the Commission that regulatory simplification will unlock economic growth and innovation in every part of the economy and within companies of all shapes and sizes – domestic and international, small to large, and everything in between. We share the view that the simplification initiative is not a matter of removing valuable rules, rather it's about ensuring the existing rules are coherent for all stakeholders and advance the development of a Digital Single Market.

Our submission focuses primarily on the overlap between the AVMSD and the DSA regarding Video-Sharing Platforms (VSPs). We believe that the current parallel application of both regimes creates legal uncertainty and unnecessary administrative burden without providing additional protection for users. We are also concerned about broadening AVMSD to regulate "content" more generally.

Redundancy in the Protection of Minors and Other Measures (Article 28b AVMSD vs. DSA)

The AVMSD's specific obligations for VSPs to protect minors (Article 28b) have effectively been superseded by the DSA's comprehensive framework. The Commission notes the need to assess whether there is "uneven protection of viewers", but for designated VSPs (especially those also designated as VLOPs), the issue is arguably double regulation rather than uneven protection.

- *Safety Measures:*
 - DSA Article 28's duty to "ensure a high level of privacy, safety and security for minors" covers the same ground as the AVMSD's requirements for parental controls and age verification, but applies to a wider range of services. The finalised Art 28 guidelines now represent a comprehensive online safety regime for child safety, including measures on child access and risk review; age assurance and determining which age assurance methods to use; account registration; account settings, including safe default settings; online interface designs; recommender systems and search features; commercial practices; content moderation; reporting; user support and tools for guardians; and governance, T&Cs, monitoring, and transparency.
 - Taken together, the DSA, its associated Codes of Conduct, and the Article 28 guidelines represent a whole-of-ecosystem approach to online harm in the EU.
 - By contrast, national regulators under the AVMSD have taken divergent and sometimes highly bespoke approaches to enforcing the law's safety measures. The regulators have developed online safety codes that aren't necessarily harmonised across the single market and which do, in many instances, overlap with DSA requirements.
 - As the Commission seeks to "reduce unnecessary regulatory burden", we argue that the DSA should be the primary instrument for platform safety architecture.
- *Systemic Risk vs. Content Measures:* For VLOPs – which most middle tech services are already designated as or aspire to one day be – the DSA obliges platforms to assess and mitigate "systemic risks," explicitly covering the wellbeing of minors. This is a broader standard than the specific content restriction measures mandated by AVMSD Article 28b. Maintaining Article 28b forces platforms to demonstrate compliance with two distinct legal tests for the same protective outcome.
- *Additional overlap:* Article 28b further unnecessarily overlaps with the DSA where it provides for advertising transparency, terms and conditions transparency, and effective complaints procedures. Such overlap is superfluous and inefficient.

Enforcement Friction and the Country of Origin Principle

The Call for Evidence rightly identifies that divergent national implementations lead to "market fragmentation and increased regulatory complexity". This is exacerbated by the clash in enforcement models:

- *AVMSD:* Focuses on the Country of Origin principle, where a single national regulator supervises the platform.

- *DSA*: Grants a mixture of supervisory powers to the European Commission and Digital Services Coordinators (DSCs).
- *Conflict/overlap*: AVMSD regulators aren't always the same organisation as the DSC. For example, in the Netherlands, the DSA is overseen by the Autoriteit Consument & Markt (ACM) and the AVMSD is overseen by the Commissariaat voor de Media (CvdM).

This creates a serious risk of "double jeopardy," where a platform's perceived breach of duty to users could simultaneously trigger a national investigation under both the AVMSD and a DSA investigation led by either the Commission or the DSC, and potentially by different regulators where the latter may be a different national organisation to the AVMSD regulator. Absent legal clarity, this fragmentation creates unnecessary legal contention and uncertainty for VSPs providers, exposes them to duplicative investigation and sanction under more than one EU regime and undermines the "internal market" objectives that the EU and AVMSD seek to foster as well as the EU's overarching commitment to regulatory simplification.

Future scope of AVMSD

Option 3 considers broadening the scope of AVMSD to transform it into a law regulating an even wider range of content. This option would inevitably create further legal uncertainty for providers, resulting in additional overlaps with the DSA and the risk of renewed tensions with press freedoms and the independence of curated editorial news under the control of the provider. Crucially, Option 3 lacks supporting evidence and would be wholly inconsistent with the EU's commitment to regulatory simplification and coherence.

Recommendation

In reviewing the policy options presented:

- We advise against Option 1 (Status Quo), as it perpetuates the conflict between the AVMSD and DSA regimes and results in the application of duplicative regulatory frameworks.
- We strongly support a version of Option 2 (Targeted Regulatory Intervention) that explicitly disapplies Article 28b of the AVMSD for VSPs providers already regulated as online platforms under the DSA.
- We strongly oppose Option 3 and any broadening of scope to other forms of content. The rules on "dissociable" and "primary purpose" should remain narrow and exclude services whose primary purpose is the provision of editorial news content.

Streamlining the existing rules for VSPs would achieve the Commission's goal of "simplifying the legal framework" and "reducing compliance costs", while ensuring the protection of minors is handled by the most comprehensive tool available: the Digital Services Act.