

Streamlining AVMSD VSP regulation for a cohesive Digital Single Market

Introduction

Middle Tech Europe (MTE) welcomes the opportunity to contribute to this review of the Audiovisual Media Services Directive (AVMSD). MTE strongly supports the European Commission's objective of simplifying and streamlining the rules in the AVMSD to ensure they remain fit for purpose.

As the digital regulatory landscape has evolved significantly since 2018, particularly with the adoption of the Digital Services Act (DSA), the parallel application of both regimes has created legal uncertainty and unnecessary administrative burdens without providing additional protection for users.

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 about removing valuable rules; rather, it's about ensuring the existing rules are coherent for all stakeholders and advancing the development of a Digital Single Market.

This position paper outlines MTE's core recommendation for the ongoing review of the AVMSD: *the Video-Sharing Platform (VSP) related duties on audience protection under the AVMSD, and VSP advertising obligations should be folded into the DSA and the UCPD to eliminate double regulation, streamline compliance, and strengthen the Digital Single Market. MTE does not take a position on other obligations under the AVMSD beyond those applicable to VSPs.*

1. The disproportionate burden on "Middle Tech" and the competitiveness agenda

MTE agrees with the EC that regulatory simplification will unlock economic growth and innovation across the digital economy. However, the current overlap between the AVMSD and the DSA disproportionately harms mid-sized tech companies and European start-ups.

While companies on the upper end of the Very Large Online Platform (VLOP), which have legal and compliance resources to absorb overlapping regulatory frameworks, "middle tech" companies do not. Being subject to both national media regulators under the AVMSD and Digital Services Coordinators (and the Commission) under the DSA forces mid-sized platforms to build separate compliance teams, representing a significant and disproportionate drain on resources. This duplicative burden siphons funds away from innovation functions, stifles European growth, and directly contradicts the Commission's competitiveness and simplification agenda.

2. Divergent regulatory logics, equivalent outcomes

Recent Council discussions have highlighted that the AVMSD and the DSA both aim to protect minors but follow different regulatory logic. The AVMSD is a content-based instrument focusing on the nature of audiovisual material and its potential impact. The DSA adopts a horizontal, systemic risk-based approach focusing on platform design, governance, and operational processes.

While we acknowledge these differing regulatory logics, MTE stresses that for VSPs, the resulting standards and duties cover overlapping territory but are different enough to force companies into separate compliance streams. More importantly, the outcomes for users are functionally equivalent.

- **The DSA** requires platforms to put in place proportionate measures to ensure a high level of privacy, safety, and security for minors, and strictly prohibits targeted advertisements based on the profiling of known minors. Furthermore, the Article 28 guidelines introduce comprehensive requirements on age verification, age-appropriate designs, recommender systems, user agency, and parental controls.
- **The AVMSD** requires VSP providers to protect minors from content that may impair their physical, mental, or moral development through measures such as age verification and parental control systems. It also mandates reporting and flagging mechanisms for harmful or illegal content.

Concrete Fragmentation: This overlap forces mid-sized platforms into separate compliance streams. For instance, a platform must currently design and document one parental control flow to satisfy a national media regulator under the AVMSD, while simultaneously mapping that exact same feature into a systemic risk mitigation strategy to satisfy the DSC under the DSA.

3. The precedent for streamlining: integrating risk assessments into the DSA

MTE urges the EU to recognise that the VSP-related audience protection obligations of the AVMSD are now functionally recreated by the DSA. Whatever can be simplified and streamlined ought to be made part of the DSA.

VSPs have achieved strong outcomes for viewer protection, but this is increasingly a result of DSA-aligned measures and platforms' own trust and safety investments, **not necessarily** attributable to Article 28b specifically. This suggests that the DSA is the most appropriate instrument going forward.

This approach has precedent within current EU legislative debates. In examining the interactions between the draft Child Sexual Abuse Material (CSAM) Regulation and the DSA, the Cypriot

Presidency has appropriately proposed to run providers' risk assessments relative to CSAM under the DSA. Because the draft CSAM Regulation has similar requirements for companies as the DSA (specifically Articles 28, 34, and 35), the requirement to conduct risk assessments and mitigation for CSAM should logically fall under the horizontal framework of the DSA, treating the CSAM bill as a sector-specific supplement.

MTE believes this exact logic must be applied to the AVMSD review. The DSA, its associated Codes of Conduct, and Article 28 guidelines represent a whole-of-ecosystem approach to online harm in the EU. Rather than duplicating child protection, age assurance, risk assessment, and content reporting mandates under the AVMSD, these duties should be subsumed into the DSA's comprehensive online safety regime to avoid redundant obligations.

4. The UCPD and DSA: a comprehensive safety net for consumers

The ongoing AVMSD consultation rightly questions the interplay between the AVMSD and the Unfair Commercial Practices Directive (UCPD). The UCPD acts as a safety net legislation applying to the practices of all traders in business-to-consumer relations, protecting consumers against misleading and aggressive practices.

We assess that the outcomes achieved by VSPs for consumer safety are not necessarily attributable to Article 28b specifically, and we therefore think that the best instrument going forward to govern commercial communications for VSPs is the UCPD.

When combined with the DSA's rigorous transparency requirements for online advertising and commercial communications, the EU already possesses a formidable, horizontal shield for consumers. The DSA mandates that platforms ensure users can easily identify when content is an advertisement, on whose behalf it is presented, and who paid for it.

Because the UCPD and the DSA together provide a more than sufficient safety net governing commercial communications and influencer marketing for VSPs, maintaining a third, overlapping layer of advertising transparency and minor safety rules specifically for VSPs under the AVMSD is entirely redundant. Removing this overlap will simplify the landscape for VSPs, advertisers, creators, and platforms alike.

5. Resolving "Double Jeopardy" in VSP enforcement

The current overlap between the AVMSD and the DSA not only burdens platforms with duplicative compliance efforts but also creates severe enforcement friction for VSPs and a risk of double jeopardy.

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

- **The DSA** grants supervisory powers to both the European Commission and Digital Services Coordinators (DSCs).

For example, in the Netherlands, the DSA is overseen by the Autoriteit Consument & Markt (ACM), while the AVMSD is overseen by the Commissariaat voor de Media (CvdM) - two separate regulators, two separate compliance streams. This fragmentation creates a serious risk of "double jeopardy," where a platform's perceived breach of duty to users could simultaneously trigger a national investigation under the AVMSD and a concurrent DSA investigation. This fundamentally undermines the EU's internal market objectives.

Conclusion and recommendations

Regulatory simplification is not about removing valuable rules. It's about ensuring existing rules are coherent and advance the development of a true Digital Single Market. The AVMSD's specific obligations for VSPs to protect audiences, particularly minors, and govern advertising transparency (Article 28b) are now functionally duplicated by the DSA's comprehensive framework and the UCPD.

In reviewing the policy options presented in the ongoing consultation on the specific question of VSP audience protection and advertising obligations, MTE advises against maintaining the status quo, which perpetuates legal uncertainty and double regulation.

Instead, MTE strongly supports a targeted regulatory intervention that explicitly disapplies Article 28b of the AVMSD for VSPs already subject to the DSA and UCPD. Streamlining these rules will achieve the Commission's goal of simplifying the legal framework and reducing compliance costs, while ensuring that the protection of consumers and minors is handled by the most comprehensive and effective tool available: the Digital Services Act.